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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1700 and 1709

RIN 0572–AB91

Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is adopting regulations implementing its financial assistance programs for rural communities with extremely high energy costs. These programs are authorized under section 19 of the Rural Electrification Act of 1936, as amended. This direct final rule is intended to establish and clarify eligibility and application requirements, the review and approval process, and grant administration procedures for RUS grants to rural communities with extremely high energy costs and for grants to State entities for bulk fuel revolving loan funds. This publication of these rules will assure timely and effective distribution of grant funds to eligible rural communities and State entities.

DATES: This rule will become effective on March 21, 2005, unless RUS receives written adverse comments or a written notice of intent to submit adverse comments on or before March 4, 2005. If such comments or notice is received, RUS will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the propose rule published in this edition of the **Federal Register** in the proposed rule section. Written comments must be received by RUS or carry a postmark or equivalent no later than March 4, 2005.

ADDRESSES: Submit your adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instruction for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2.Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''7 CFR 1700 and 1709.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250–1522.

Instructions: RUS requests a signed original and three copies of all written comments (7 CFR 1700.4). Comments may also be submitted by e-mail at *RUSComments@usda.gov* and must contain the phrase ''High Cost Energy Grants'' in the subject line. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without changes to *http://www.usda.gov.rus.index2.Comments.htm,* including any personal information provided. All comments will also be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Ave., SW., Stop 1560, Room 5165-S, Washington, DC 20250–1560. Telephone (202) 720–9545, fax (202) 690–0717, e-mail address: *Karen.Larsen@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final 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 (OMB).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the High Energy Cost Grant and Loan program is 10.859. The State Bulk Fuel Revolving Fund grant program CFDA program number is 10.857. The Denali Commission High Energy Cost Grant and Loan Program CFDA program number is 10.858. The Catalog is available on a subscription basis from the Superintendent of Documents, the Unites States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will not be preempted, no retroactive effect will be given to this rule, and, in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this direct final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

Regulatory Flexibility Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because RUS is not required by 5 U.S.C. 553 (a)(2) or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this direct final rule.

Unfunded Mandates

This direct final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This direct final rule has been examined under RUS environmental regulations at 7 CFR part 1794. The RUS Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirement

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection. Comments must be received by April 4, 2005. 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.

Title: Assistance to High Energy Cost Rural Communities.

Type of Request: Revision of a currently approved collection.

OMB Control No.: 0572–0136.

Abstract: This grant program will be administered by the Electric Program within the USDA Rural Utilities Service. Section 19 of the Rural Electrification Act of 1936, as amended (RE Act) authorizes the Secretary of Agriculture, acting through RUS, to make grants and loans to acquire, construct, extend, upgrade and otherwise improve energy facilities serving communities in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy.

Section 19 of the RE Act also authorizes the Secretary of Agriculture to make grants to establish and support a revolving fund to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation (the State Bulk Fuel Revolving Fund grant program).

This rule sets forth the policies and procedures associated with the High Cost Energy Grant programs and the State Bulk Fuel Revolving Fund Grant Program, including the grant application and evaluation procedures and ongoing administration requirements for the programs. The currently approved collection of information covers the reporting burden associated with the High Energy Program. RUS intends to amend the collection of information to include hours associated with the State Bulk Fuel Program.

Estimated Number of Respondents: Respondent grant applicants and grantees include individuals, business or other for-profit entities, not-for-profit institutions, and State, local, or tribal governments is estimated to be a combined total of 46 respondents.

Estimated Number of Responses per Respondent: It is estimated that the total number of responses per respondent is a combined total of 7.89 responses.

Estimated Number of Total Annual Responses: It is estimated that the combined total number of responses is 187.

Estimate of Hours Per Response: Public reporting burden for this collection of information is estimated to total an average of 8.33 burden hours for both programs.

Estimate of Total Annual Burden: It is estimated that the combined total of total annual burden hours 931.

You may request copies of this information collection from Mary Pat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RUS, including whether the information will have practical utility; (b) the accuracy of RUS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. You may send your written comments to Mary Pat Daskal, Program Development and Regulatory Analysis, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. E-mail responses may be sent to *MaryPat.Daskal@usda.gov.* 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.

Background

In 2000, the Rural Electrification Act of 1936, as amended (RE Act) was amended to create new financial assistance programs for high energy cost rural communities (Public Law 106–472, § 301, Nov. 9, 2000). The new section 19 of the RE Act (7 U.S.C. 918a) authorizes the Secretary of Agriculture through the RUS to:

- Provide grants and loans to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving extremely high energy cost communities;
- Provide grants and loans to the Denali Commission (a Federal-State agency) to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving extremely high energy cost communities in rural Alaska; and
- Provide grants to existing State government entities for bulk fuel revolving funds to provide a more cost-effective means of purchasing fuel where the fuel cannot be shipped by means of surface transportation.

This rulemaking codifies Agency policies and procedures for the RUS Assistance to High Energy Cost Communities Programs, including eligibility, application, and grant administration requirements for the High Energy Cost Grant Program and the Bulk Fuel Revolving Fund Grant Program. RUS is deferring issuing regulations implementing the loan programs authorized under these programs because no loan funds have been appropriated. The Denali Commission High Energy Cost Grants and Loan Program is administered by means of a Memorandum of Understanding and grant agreements executed between the RUS and the Denali Commission. The Denali Commission, a Federal agency, is the sole entity that is eligible for grants and loans under section 19(a)(2) of the RE Act (7 U.S.C. 918a(a)(2)). Applications and awards for assistance from the Denali Commission using RUS grant funds are administered under rules and procedures established by the Denali Commission.

During the first years of appropriations for these grant and loan programs, RUS administered the program under the USDA's general grant regulations, 7 CFR 3015, and requested competitive grant applications through publication of Notices of Funding Availability in the **Federal Register**. Because Congressional funding for the grant programs has continued, and given the high level of interest in the grant program, RUS is promulgating program-specific regulations that supplement the Department-wide grant regulation provisions.

Description of Rule

RUS is revising 7 CFR part 1700 to include amendments and additions to the Agency delegations of authority to include the Assistance to High Energy Cost Rural Communities Programs and to delegate responsibility for administering the programs to the Assistant Administrator, Electric Program subject to certain explicit reservations to the Administrator.

The rules add a new part 1709 to Chapter XVII of title 7 of the Code of Federal Regulations.

Subpart A sets forth general policies, definitions, and administrative requirements for the Assistance to High Energy Cost Rural Communities programs. These provisions supplement and do not supplant general USDA and government-wide grant requirements. Subpart A includes provisions for the Administrator to allocate available funds among programs, establish application periods, and to determine and revise energy cost benchmarks for eligibility purposes.

Subpart B sets forth the policies, procedures and requirements that are specific to the RUS High Energy Cost Grant program authorized under section 19(a)(2) of the RE Act. The rules describe eligibility requirements for applicants, communities, and projects. These provisions are similar to those used in the High Energy Cost Grant Notices of Funds Availability published December 9, 2002 (67 FR 72904) and January 23, 2004 (69 FR 3317). Subpart B also sets out the general application procedures that will be used and the evaluation and priority criteria that will be used by RUS to conduct solicitations for competitive grant applications. RUS proposes that detailed information on application requirements, application submissions, selection criteria weights and priorities and updated high energy cost eligibility benchmarks will be included in the grant announcement published for each application cycle.

Subpart C establishes policies and procedures specific to the State Bulk Fuel Revolving Fund Grant program established under section 19(a)(3) of the RE Act. These rules are substantially similar to the procedures, policies, and definitions used in the Notice of Funding Availability published in the **Federal Register** on July 6, 2002 (66 FR 35584). That notice resulted in a single grant application from the State of Alaska. Other States and Territories may, however, also be eligible to participate in this program. Accordingly, RUS is adopting regulations and procedures for any future grant offerings under this program.

Subpart G establishes RUS policy on recovery of financial assistance received under the loan and grant programs administered under this part by individuals or entities subsequently found to be ineligible or the use of grant funds for unauthorized purposes. Because of the limited amount of grant funds available to extremely high energy cost communities, the Agency believes it is appropriate to make clear that it will exercise whatever authority it has, including, but not limited to departmental regulations concerning the suspension or termination of grant agreements under 7 CFR part 3015, subpart N, to recover any grant or loan funds for which the applicant, community, or project is subsequently found to be ineligible or that were used for unauthorized purposes.

List of Subjects

7 CFR Part 1700

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

7 CFR Part 1709

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

■ For the reasons set forth in the preamble, RUS is amending chapter XVII, title 7, of the Code of Federal Regulations as follows:

PART 1700—GENERAL INFORMATION

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*, 7 CFR 2.7.

Subpart B—Agency Organization and Functions

■ 2. Subpart B is amended by adding § 1700.33 to read as follows:

§ 1700.33 Assistance to High Energy Cost Rural Communities.

RUS, through the Electric Program, makes grants and loans to assist high energy cost rural communities. The Assistant Administrator, Electric Program, directs and coordinates the assistance to high energy cost rural communities program and serves as the primary point of contact for applicants, grantees, and borrowers.

Subpart C—Loan and Grant Approval Authorities

■ 3. Subpart C is amended by adding § 1700.58 to read as follows:

§ 1700.58 Assistance to high energy cost rural communities.

(a) *Administrator:* The authority to approve the following is reserved to the Administrator:

(1) Allocation of appropriated funds among high energy cost community assistance programs;

(2) Awards of grants and loans to extremely high energy cost communities;

(3) Awards of grants and loans to the Denali Commission;

(4) Awards of grants to State entities for State bulk fuel revolving funds; and

(5) Grant agreements, loan contracts, security instruments and all other documents executed in connection with grants and loans agreements approved by the Administrator.

(b) *The Assistant Administrator, Electric Program* has the authority to make any required certifications and to approve all grant and loan servicing actions not specifically reserved to the Administrator.

■ 4. Part 1709 is added to read as follows:

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

Subpart A—General Requirements

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1709.2 Policy. [Reserved]
1709.3 Definitions.
1709.4 Allocation of available funds among programs.
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1709.19 Other USDA regulations.

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1709.21 Audit requirements.
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Subpart B—RUS High Cost Energy Grant Program

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1709.108 Supporting data for determining community eligibility.
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1709.118 Submission of applications.
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1709.121 Administrator's review and selection of grant awards.
1709.122 Consideration of eligible grant applications under later grant announcements.
1709.123 Evaluation criteria and weights.
1709.124 Grant award procedures.
1709.125–1709.200 [Reserved]

Subpart C—Bulk Fuel Revolving Fund Grant Program

1709.201 Purpose.
1709.202 Policy. [Reserved]
1709.203 Definitions.
1709.204–1709.206 [Reserved]
1709.207 Eligible applicants.
1709.208 Use of grant funds.
1709.209 Limitations on use of grant funds.
1709.210 Application process.
1709.211 Submission of applications.
1709.212 Application review.
1709.213 Evaluation of applications.
1709.214 Administrator's review and selection of grant awards.
1709.215 Consideration of unfunded applications under later grant announcements.
1709.216 Evaluation criteria and weights.
1709.217 Grant award.
1709.218–1709.300 [Reserved]

Subparts D–F—[Reserved]

Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes

1709.601 Policy.
1709.602–1709.700 [Reserved]
1709.701–1709.999 [Reserved]

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A—General Requirements

§ 1709.1 Purpose.

The purpose of the Rural Utilities Service (RUS) Assistance to High Energy Cost Rural Communities Program is to help local communities meet their energy needs through direct loans and grants for energy facilities in qualifying extremely high energy cost communities, grants and loans to the Denali Commission for extremely high energy cost communities in Alaska, and grants to States to support revolving funds to finance more cost effective means of acquiring fuel in qualifying communities. This subpart sets forth definitions and requirements which are common to all grant and loan programs in this part administered by the RUS Electric Program under section 19 of the Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 918a).

§ 1709.2 Policy. [Reserved]

§ 1709.3 Definitions.

Administrator means the Administrator of the Rural Utilities Service (RUS), United States Department of Agriculture (USDA).

Agency means the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Census block means the smallest geographic entity for which the U.S. Census Bureau collects and tabulates decennial census information and which are defined by boundaries shown on census maps.

Census designated place (CDP) means a statistical entity recognized by the U.S. Census Bureau comprising a dense concentration of population that is not within an incorporated place but is locally identified by a name and which has boundaries defined on census maps.

Electric program means the office within RUS, and its successor organization, that administers rural electrification programs authorized by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) and such other programs so identified in USDA regulations.

Extremely high energy costs means community average residential energy costs that are at least 275 percent of one or more home energy cost benchmarks identified by RUS and based on the latest available information on national average residential energy expenditures as reported by the Energy Information Administration (EIA) of the United States Department of Energy.

Financial assistance means a grant, loan, or grant-loan combination issued under this part.

Home energy means any energy source or fuel used by a household for purposes other than transportation, including electricity, natural gas, fuel oil, kerosene, liquified petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind and solar energy. Fuels used for subsistence activities in remote rural areas are also included.

High energy cost benchmarks means the criteria established by RUS for eligibility as an extremely high energy cost community. Extremely high energy cost benchmarks are calculated as 275 percent of the relevant national average household energy benchmarks.

Indian Tribe means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include ''* * * any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Person means any natural person, firm, corporation, association, or other legal entity, and includes Indian tribes and tribal entities.

State means any of the several States of the United States, and, where provided by law, any Territory of the United States or other area authorized to receive the services and programs of the Rural Utilities Service or the Rural Electrification Act of 1936, as amended.

Target area means the geographic area to be served by the grant.

Target community means the unit or units of local government in which the target area is located.

§ 1709.4 Allocation of available funds among programs.

The Administrator, in his sole discretion, shall allocate available funds among the programs administered under this part and determine the grant application periods under each program. In making fund allocations for each fiscal year, the Administrator may consider the amount of available funds, the nature and amount of unfunded grant applications and prior awards, Agency resources, Agency priorities, and any other pertinent information.

§ 1709.5 Determination of energy cost benchmarks.

(a) The Administrator shall establish, using the most recent data available, and periodically revise, the home energy cost benchmarks and the high energy cost benchmarks used to determine community eligibility for high energy cost grant and loan programs and the Denali Commission high energy cost grants and loans. In setting these energy cost benchmarks, the Administrator shall review the latest available information on home energy costs published by the EIA. High energy cost benchmarks will be set at 275 percent of the applicable national average home energy cost benchmark as determined by the Administrator from the published EIA data. Eligibility benchmarks shall be published in each grant announcement.

(b) For use in determining eligibility for High Energy Cost Grants, the Administrator may establish benchmarks for national average annual household expenditures and for national average household per unit energy expenditures for major home energy sources or fuels, including, but not limited to, electricity, natural gas, fuel oil, kerosene, liquified petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind and solar energy.

§ 1709.6 Appeals.

An applicant may appeal a decision by the Assistant Administrator, Electric Program rejecting an application for failure to meet eligibility requirements. Applicants may not appeal rating panel scores or rankings. An appeal must be made, in writing to the Administrator, within 10 days after the applicant is notified of the determination to reject the application. Appeals must state the basis for the appeal and shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1500, Washington, DC 20250–1500. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. The Administrator's determination shall be final. A written copy of the Administrator's decision will be furnished promptly to the applicant.

§ 1709.7 Applicant eligibility.

An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a grant or loan under this part until the judgment is paid in full or otherwise satisfied. RUS financial assistance under this part may not be used to satisfy the judgment.

§ 1709.8 Electronic submission.

Applicants may submit applications and reports electronically if so provided in the applicable grant announcement and grant agreements or if other regulations provide for electronic submission. Any electronic submissions must be in the form prescribed in the applicable grant announcement, grant agreement, or regulation.

§ 1709.9 Grant awards and advance of funds.

The grantee must execute a grant agreement that is acceptable to the Agency. The grantee must sign and return the grant agreement to the Agency, within the time specified, before any grant funds will be advanced.

§ 1709.10 Ineligible grant purposes.

Grant funds under this part may not be used to:

(a) Pay costs of preparing the application package for funding under programs in this part, or for any finders fees or incentives for persons or entities assisting in the preparation or submission of an application.

(b) Fund political activities;

(c) Pay any judgment or debt owed to the United States; or

(d) Pay construction costs of the project incurred prior to the date of grant award except as provided herein. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved.

(1) Applicants may request Agency approval for reimbursement of pre-award construction obligations if there are compelling reasons for proceeding with construction before grant approval. Such requests may be approved if the Agency determines that:

(i) Compelling reasons, as determined by the Agency, exist for incurring obligations before grant approval;

(ii) The obligations will be incurred for authorized grant purposes;

(iii) All environmental requirements applicable to the Agency and the applicant have been met;

(iv) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the grant financed property: and

(v) The expenditure is incurred no more than 18 months before the date of the Administrator's approval of the grant award.

(2) The Agency may authorize payment of approved pre-award project construction obligations at the time of award approval. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

§ 1709.11 Award conditions.

In addition to all other grant requirements, all approved applicants will be required to do the following:

(a) Enter into a grant agreement with the Agency in form and substance acceptable to the Agency;

(b) Request advances or reimbursements, as applicable, as provided in the grant agreement; and

(c) Maintain a financial management system that is acceptable to the Agency.

§ 1709.12 Reporting requirements.

To support Agency monitoring of project performance and use of grant funds, Grantees shall file periodic reports, required under 7 CFR part 3015, as provided in this part, and the grant agreement as follows:

(a) A financial status report listing project expenditures by budget category in such form and at such times as provided in the grant agreement.

(b) Project performance reports in such form and at such intervals as provided in the grant agreement. The project performance report shall compare accomplishments to the objectives stated in the proposal and grant agreement. The project performance report should identify all completed tasks with supporting documentation. If the project schedule as approved in the grant agreement is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in the grant agreement.

(c) A final project performance report with supporting documentation in such form and at the time specified in the grant agreement.

(d) Such other reports as the Agency determines are necessary to assure effective grant monitoring as part of the grant agreement or the grant announcement as a condition of the grant award or advances of funds.

§ 1709.13 Grant administration.

The authority to approve administrative actions is vested in the Administrator except as otherwise provided in the RUS delegations of authority. Administration of RUS grants is governed by the provisions of this subpart and subpart B of this part, the terms of the grant agreement and, as applicable, the provisions of 7 CFR parts 3015, 3016 and 3017, or their successors.

§ 1709.14 Inspections.

The grantee will permit periodic inspection of the grant project operations by a representative of the Agency.

§ 1709.15 Grant closeout.

Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, the final project report has been submitted and found acceptable by RUS and RUS accepts final expenditure information. No monitoring action by RUS of the grantee is required after grant closeout. However, grantees remain responsible in accordance with the terms of the grant agreement for compliance with conditions on property acquired or derived through grant funds.

§ 1709.16 Performance reviews.

Each grant agreement shall include performance criteria and RUS will regularly evaluate the progress and performance of grantee according to such criteria. If the grantee does not comply with or does not meet the performance criteria set out in the grant agreement, the Administrator may require amendment of the grant agreement, or may suspend or terminate the grant pursuant to 7 CFR 2015, subpart N.

§ 1709.17 Environmental review.

(a) All grants made under this subpart are subject to the requirements of 7 CFR part 1794 or its successor.

(b) Applicants must address environmental aspects of their projects in the grant application in sufficient detail to allow the Agency to categorize the project for purposes of compliance with environmental review requirements. The grant announcement will establish the form and content of the environmental information required for the application.

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency under 7 CFR part 1794 prior to final award approval. The Agency may require the selected applicant to submit additional information, including an environmental report, environmental assessment, or environmental impact statement, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

§ 1709.18 Civil rights.

This program will be administered in accordance with applicable Federal Civil Rights Law. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. In addition, all grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. Grantees are required to comply with certain regulations on nondiscrimination in program services and benefits and on equal employment opportunity including 7 CFR parts 15 and 15b; and 45 CFR part 90, as applicable.

§ 1709.19 Other USDA regulations.

The grant programs under this part are subject to the provisions of other departmental regulations, including but not limited to the following departmental regulations, or their successors, as applicable:

(a) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(b) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(c) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(d) 7 CFR part 3018, New Restrictions on Lobbying;

(e) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(f) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

§ 1709.20 Member delegate clause.

Each grant agreement under this part shall provide that no member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a member of Congress.

§ 1709.21 Audit requirements.

The grantee shall provide the Agency with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the grantee is a for-profit entity, an RUS Electric or Telecommunication borrower or any other entity not covered by paragraph (b) of this section, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, ''Policy on Audits of RUS Borrowers'' and the grant agreement.

(b) If the grantee is a State or local government, or a non-profit corporation (other than an RUS Electric or Telecommunication Borrower), the recipient shall provide an audit in accordance with 7 CFR part 3052.

§ 1709.22 Project changes.

The Grantee shall obtain prior written approval from the Agency for any change to the scope or objectives of the approved grant project.

§§ 1709.23–1709.99 [Reserved]

§ 1709.100 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0136.

Subpart B—RUS High Energy Cost Grant Program

§ 1709.101 Purpose.

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) High Energy Cost Grant Program under section 19(a)(1) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 918a(a)(1)). The purpose of this grant program is to assure access to adequate and reliable energy services for persons in extremely high energy cost communities by providing financial assistance to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving the community.

§ 1709.102 Policy.

(a) All high energy cost grants will be awarded competitively subject to the limited exceptions in 7 CFR 3015.158(d).

(b) RUS may give priority consideration to projects that benefit smaller rural communities, communities experiencing economic hardship, projects that extend service to households that lack reliable centralized or commercial energy services, and projects that correct imminent hazards to public safety, welfare, the environment or critical community energy facilities. RUS may also give priority to projects that are coordinated with State rural development initiatives or that serve a Federally-identified Empowerment Zone or Enterprise Community (EZ/EC) or a USDA-identified ''Champion Community.'' Priority consideration will be provided through the award of additional points under the project selection criteria as specified in the grant announcement.

§§ 1709.103–1709.105 [Reserved]

§ 1709.106 Eligible applicants.

(a) Eligible applicants for grants to fund projects serving eligible extremely high energy cost communities include Persons, States, political subdivisions of States, and other entities organized under the laws of States.

(b) Eligible applicants may be for-profit or non-profit business entities including but not limited to corporations, associations, partnerships, limited liability partnerships (LLPs), cooperatives, trusts, and sole proprietorships.

(c) Eligible government applicants include State and local governments, and agencies and instrumentalities of States and local governments.

(d) Indian tribes, other tribal entities, and Alaska Native Corporations are eligible applicants.

(e) Individuals are also eligible applicants under this program, however the proposed grant project must provide community benefits and not be for the sole benefit of the individual applicant or an individual household.

(f) As a condition of eligibility, the applicant must demonstrate the capacity:

(1) to enter into a binding grant agreement with the Federal Government at the time of the award approval; and

(2) to carry out the proposed grant project according to its terms.

§ 1709.107 Eligible communities.

(a) An eligible community under this program is one in which the average home energy costs exceed 275 percent of the national average under one or more high energy cost benchmarks established by RUS based on the latest available residential energy information from the Energy Information Administration (EIA) of the United States Department of Energy. RUS will update the national and high energy cost community benchmarks periodically to incorporate any changes in national home energy costs reported by EIA. RUS will publish the high energy cost community benchmark criteria in the grant announcement. Community eligibility will be determined by RUS at the time of application based on the criteria published in the applicable grant announcement.

(b) The Application must include information demonstrating that each community in the grant's proposed target area exceeds one or more of the RUS high energy cost community benchmarks to be eligible for assistance under this program. The smallest area that may be designated as a target area is a 2000 Census block

(c) The target community may include an extremely high cost to serve portion of a larger service area that does not otherwise meet the criteria, provided that the applicant can establish that the costs to serve the smaller target area exceed the benchmark.

(d) In determining the community energy costs, applicants may include additional revenue sources that lower the rates or out of pocket consumer energy costs such as rate averaging, and other Federal, State, or private cost contributions or subsidies.

(e) The applicant may propose a project that will serve high energy cost communities across a State or region, but where individual project beneficiaries will be selected at a later time. In such cases, to establish eligibility, the applicant must provide sufficient information in the application to determine that the proposed target area includes eligible high energy cost communities and proposed selection criteria to assure that grant funds are used to serve eligible communities.

§ 1709.108 Supporting data for determining community eligibility.

The application shall include the following:

(a) *Documentation of energy costs.* Documents or references to published or other sources for information or data on home energy expenditures or equivalent measures used to support eligibility, or where such information is unavailable or does not adequately reflect the actual cost of average home energy use in a local community, reasonable estimates of commercial energy costs.

(b) *Served areas.* A comparison of the historical residential energy cost or expenditure information for the local commercial energy provider(s) serving the target community or target area with the benchmark criteria published by the Agency.

(c) *Engineering estimates.* Estimates based on engineering standards may be used in lieu of historical residential energy costs or expenditure information under the following circumstances:

(1) Where historical community energy cost data are unavailable (unserved areas), incomplete or otherwise inadequate;

(2) Where the target area is not connected to central station electric service to a degree comparable with other residential customers in the State or region.

(3) Where historic energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure that would have the effect of raising costs above one or more of the Agency benchmarks.

(d) *Independent Agency review.* Information to support high energy cost eligibility is subject to independent review by the Agency. The Agency may reject applications that are not based on credible data sources or sound engineering estimates.

§ 1709.109 Eligible projects.

Eligible projects are those that acquire, construct, extend, repair, upgrade or otherwise improve energy generation, transmission or distribution facilities serving communities with extremely high energy costs. All energy generation, transmission and distribution facilities and equipment used to provide or improve electricity, natural gas, home heating fuels, and other energy services to eligible communities are eligible. Projects providing or improving service to communities with extremely high energy costs through on-grid and off-grid renewable energy technologies, energy efficiency, and energy conservation projects and services are eligible. A grant project is eligible if it improves, or maintains energy services, or reduces the costs of providing energy services to eligible communities. Examples of eligible activities include, but are not limited to, the acquisition, construction, replacement, repair, or improvement of:

(a) Electric generation, transmission, and distribution facilities, equipment, and services serving the eligible community;

(b) Natural gas distribution or storage facilities and associated equipment and activities serving the eligible community;

(c) Petroleum product storage and handling facilities serving residential or community use.

(d) Renewable energy facilities used for on-grid or off-grid electric power generation, water or space heating, or process heating and power for the eligible community;

(e) Backup up or emergency power generation or energy storage equipment, including distributed generation, to serve the eligible community; and

(f) Implementation of cost-effective energy efficiency, energy conservation measures that are part of the implementation of a coordinated demand management or energy conservation program for the eligible community, such as, for example, weatherization of residences and community facilities, or acquisition and installation of energy-efficient or energy saving appliances and devices .

§ 1709.110 Use of grant funds.

(a) *Project development costs.* Grants may be used to fund the costs and activities associated with the development of an eligible energy project. RUS will in no case approve the use of grant funds to be used solely or primarily for project development costs. Eligible project development costs must be reasonable and directly related to the project and may include the following:

(1) Costs of conducting, or hiring a qualified consultant to conduct, a feasibility analysis of the proposed project to help establish the financial and technical sustainability of the project, provided that such costs do not exceed more than 10 percent of total project costs;

(2) Design and engineering costs, including costs of environmental and cultural surveys and consulting services necessary to the project and associated environmental review, siting and permit approvals; and

(3) Fees for legal and other professional services directly related to the project.

(b) *Construction costs.* Grant funds may be used for the reasonable costs of construction activities, including initial construction, installation, expansion, extension, repair, upgrades, and related activities, including the rental or lease of necessary equipment, to provide or improve energy generation, transmission, or distribution facilities or services;

(c) *Acquisitions and purchase.* Grant funds may be used for the acquisition of property, equipment, and materials, including the purchase of equipment, and materials, the acquisition or leasing of real or personal property, equipment, and vehicles associated with and necessary for project development, construction, and operation. Grant funds may be used for the acquisition of new or existing facilities or systems where such action is a cost-effective means to extend or maintain service to an eligible community or reduces the costs of such service for the primary benefit of community residents.

(d) *Grantee cost contributions.* Grant funds may be applied as matching funds or cost contributions under Federal or other programs where the terms of those programs so allow use of other Federal funds.

§ 1709.111 Limitations on use of grant funds.

(a) *Planning and administrative costs.* Not more than 4 percent of each grant award may be used for the planning and administrative expenses of the applicant that are unrelated to the grant project.

(b) *Unproven technology.* Only projects that utilize technology with a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment, are eligible for funding. Energy projects utilizing experimental, developmental, or prototype technologies or technology demonstrations are not eligible for grant funds. The determination by RUS that a project relies on unproven technology shall be final.

§ 1709.112 Ineligible grant purposes.

(a) Grant funds may not be used for the costs of preparing the grant application, finders fees, fuel purchases, routine maintenance or other operating costs, or purchase of equipment, structures or real property not directly associated with providing energy services in the target community, or, except as provided in § 1709.11(d), project construction costs incurred prior to the date of the grant award.

(b) In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

(c) Grant funds may not be used to refinance or repay the applicant's outstanding loans or loan guarantees under the Rural Electrification Act of 1936, as amended.

§ 1709.113 Limitations on grant awards.

(a) The Administrator may establish minimum or maximum amount of funds that may be awarded in a single grant application within in any grant cycle in order to distribute available grant funds as broadly as possible. If the Administrator elects to impose a minimum or maximum grant amount, the limitations will be published in the grant announcement.

(b) The Administrator may restrict eligible applicants to a single award of grant funds or to a monetary cap on grant awards within a grant cycle in order to assure that the available grant funds are distributed as broadly as possible. If the Administrator elects to impose a limit or cap on grant awards, the terms will be established in the grant announcement.

§ 1709.114 Application process.

The RUS will request applications for high energy cost grants on a competitive basis by publication of a grant announcement as a Notice of Funds Availability (NOFA) or Notice of Funding Opportunity. The grant announcement will establish the amount of funds available, the application package contents and additional requirements, the availability of application materials, high energy cost community eligibility benchmarks, selection criteria and weights, priority considerations, and deadlines and procedures for submitting applications.

§ 1709.115 Availability of application materials.

Application materials, including copies of the grant announcement and all required forms and certifications will be available by request from the Agency and by such other means as the Agency may determine. In addition, the Agency may make available an application guide and other materials that may be of assistance to prospective applicants.

§ 1709.116 Application package.

The requirements for the application package will be established in the grant announcement. A complete application package will consist of the standard application for federal assistance (SF–424 series), as applicable, a narrative project proposal prepared in accordance with the grant announcement, an RUS environmental profile, and such other supporting documentation, forms, and certifications as required in the grant announcement and this part.

§ 1709.117 Application requirements.

(a) *Required forms.* The forms required for application and where to obtain them will be specified in the announcement. All required forms must be completed, signed and submitted by a person authorized to submit the proposal on behalf of the applicant. For applications and forms that are submitted electronically, the application must be authenticated as provided in the grant announcement. In the case of grant applications submitted electronically, the applicant may be required to provide signed originals of required forms prior to and as a condition of the grant award.

(b) *Narrative proposal.* Each application must include a narrative proposal describing the proposed project and addressing eligibility and selection criteria. The grant announcement will specify the contents, order, and format for the narrative proposal. The proposal must include all the required elements identified in this subsection. The grant announcement may establish additional required elements that must be addressed in the narrative project proposal.

(1) *Executive summary.* A summary of the proposal should briefly describe the project including target community, goals, tasks to be completed and other relevant information that provides a general overview of the project. The applicant must clearly state the amount of grant funds requested and identify any priority ratings for which the applicant believes it is qualified.

(2) *Applicant eligibility.* The narrative and supporting documentation must describe the applicant and establish its eligibility.

(3) *Community eligibility.* This section must describe the target area and communities to be served by the project and demonstrate eligibility. The applicant must clearly identify the:

(i) Location and population of the areas to be served by the project;

(ii) Population of the local government division to which they belong;

(iii) Identity of local energy providers; and

(iv) Sources of the high energy cost data and estimates used.

(4) *Project eligibility.* The narrative must describe the proposed project in sufficient detail to establish that it is an eligible project.

(5) *Project description.* The project description must:

(i) Describe the project design, materials, and equipment in sufficient detail to support a finding of technical feasibility;

(ii) Identify the major tasks to be performed and a proposed timeline for completion of each task; and

(iii) Identify the location of the project target area and the eligible extremely high energy cost communities to be served.

(6) *Project management.* The applicant must describe how and by whom the project will be managed during construction and operation. The description should address the applicant's organizational structure, key project personnel and the degree to which full time employees, affiliated entities or contractors will be utilized. The applicant must describe the identities, legal relationship, qualifications and experience of those persons that will perform project management functions. If the applicant proposes to use the equipment or design, construction and other services from non-affiliated entities, the applicant must describe how it plans to contract for such equipment or services.

(7) *Budget.* The budget narrative must present a detailed breakdown of all estimated costs and allocate these costs among the listed tasks in the work plan. All project costs, not just grant funds, must be accounted for in the budget. A pro forma operating budget for the first year of operations must also be included. The detailed budget description must be accompanied by SF–424A, ''Budget Information—Non-Construction Programs,'' or SF–424C ''Budget Information—Construction Programs,'' as applicable.

(8) *Project goals and objectives.* The applicant must identify unambiguous measures for expected cost reduction, efficiencies or other improvements and the degree to which the incremental benefit will be enjoyed by residents of the eligible community. The description should specifically address how the project will provide or improve energy generation, transmission or distribution services in the target area. The project objectives and proposed evaluation measures will be the basis for project performance measures in the grant agreement.

(9) *Performance measures.* The application must include specific criteria for measuring project performance. These proposed criteria will be used in establishing performance measures incorporated in the grant agreement in the event the proposal receives funding under this subpart. These suggested criteria are not binding on the Agency. Appropriate measures of project performance include expected reductions in home energy costs, avoided cost increases, enhanced reliability, new households served, or economic and social benefits from improvements in energy services.

(10) *Proposal evaluation and selection criteria.* The application must address individually and in narrative form each of the proposal evaluation and selection criteria referenced in the grant announcement.

(11) *Rural development initiatives.* The proposal should describe whether and how the proposed project will support any State rural development initiatives. If the project is in support of a rural development initiative, the application should include confirming documentation from the appropriate rural development agency. The application must identify the extent to which the project is dependent upon or tied to other rural development initiatives, funding and approvals.

(12) *Environmental profile.* The application must include information about project characteristics and site specific conditions that may involve environmental, historic preservation and other resource issues. This information must be presented in sufficient detail so as to facilitate the Agency's identification of projects that may require additional environmental review under 7 CFR part 1794 before a grant award can be approved. The format and requirements for the environmental profile will be established in the grant announcement.

(13) *Regulatory and other required project approvals.* The applicant must identify all regulatory or other approvals required by other Federal, State, local, tribal or private entities (including conditions precedent to financing) that are necessary to carry out the proposed project and an estimated schedule for obtaining the necessary permits and approvals.

§ 1709.118 Submission of applications.

Unless otherwise provided in the grant announcement, a complete original application package and two copies must be submitted by the application deadline to RUS at the address specified in the applicable announcement. Instructions for submittal of applications electronically will be established in the grant announcement.

§ 1709.119 Review of applications.

(a) RUS will review each application package received to determine whether the applicant is eligible and whether the application is timely, complete, and responsive to the requirements set forth in the grant announcement.

(b) RUS may, at its discretion, contact the applicant to clarify or supplement information in the application needed to determine eligibility, identifying information, and grant requests to allow for informed review. Failure of the applicant to provide such information in response to a written request by the Agency within the time frame established by the Agency may result in rejection of the application.

(c) After consideration of the information submitted, the Assistant Administrator, Electric Program will determine whether an applicant or project is eligible and whether an application is timely, complete, and responsive to the grant announcement and shall notify the applicant in writing. The Assistant Administrator's decision on eligibility may be appealed to the Administrator.

§ 1709.120 Evaluation of applications.

(a) The Agency will establish one or more rating panels to review and rate the grant applications. The panels may include persons not employed by the Agency.

(b) All timely and complete applications that meet the eligibility requirements will be referred to the rating panel. The rating panel will evaluate and rate all referred applications according to the evaluation criteria and weights established in the grant announcement. Panel members may make recommendations for conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements.

(c) After the rating panel has evaluated and scored all proposals, in accordance with the point allocation specified in the grant announcement, the panel will prepare a list of all applications in rank order, together with funding level recommendations and recommendations for conditions, if any.

(d) The list of ranked projects and rating panel recommendations will be forwarded to the Administrator for review and selection.

§ 1709.121 Administrator's review and selection of grant awards.

(a) The final decision to make an award is at the discretion of the Administrator. The Administrator shall make any selections of finalists for grant awards after consideration of the applications, the rankings, comments, and recommendations of the rating panel, and other pertinent information.

(b) Based on consideration of the application materials, ranking panel ratings, comments, and recommendations, and other pertinent information, the Administrator may elect to award less than the full amount of grant requested by an applicant. Applicants will be notified of an offer of a reduced or partial award. If an applicant does not accept the Administrator's offer of a reduced or partial award, the Administrator may reject the application and offer an award to the next highest ranking project.

(c) The projects selected by the Administrator will be funded in rank order to the extent of available funds.

(d) In the event an insufficient number of eligible applications are received in response to a published grant announcement and selected for funding to exhaust the funds available, the Administrator reserves the discretion to reopen the application period and to accept additional applications for consideration under the terms of the grant announcement. A notice regarding the reopening of an application period will be published in the **Federal Register**.

§ 1709.122 Consideration of eligible grant applications under later grant announcements.

At the discretion of the Administrator, the grant announcement may provide that all eligible but unfunded proposals submitted under preceding competitive grant announcements may also be considered for funding. This option is provided to reduce the burden on applicants and the Agency. The grant announcement shall indicate how applicants may request reconsideration of previously submitted, but unfunded, applications and how they may supplement their applications.

§ 1709.123 Evaluation criteria and weights.

(a) *Establishing evaluation criteria and weights.* The grant announcement will establish the evaluation criteria and weights to be used in ranking the grant proposals submitted. Unless supplemented in the grant announcement, the criteria listed in this section will be used to evaluate proposals submitted under this program. Additional criteria may be included in the grant announcement. In establishing evaluation criteria and weights, the total points that may be awarded for project design and technical merit criteria shall not be less than 65 percent of the total available points, and the total points awarded for priority criteria shall not be more than 35 percent of the total available points. The distribution of points to be awarded per criterion will be identified in the grant announcement.

(b) *Project design and technical merit.* In reviewing the grant proposal's project design and technical merit, reviewers will consider the soundness of the applicant's approach, the project's technical and financial feasibility, the adequacy of financial and other resources, the capabilities and experience of the applicant and its project management team, the project goals, and identified community needs and benefits. Points will be awarded under the following project elements:

(1) *Comprehensiveness and feasibility.* Reviewers will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the eligible communities. The panel will review the proposed design, construction, equipment and materials for the proposed energy facilities to determine technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Budgets will be reviewed for completeness and the strength of non-Federal funding commitments. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed. Reviewers will also evaluate how the applicant proposes to manage available resources such as grant funds, income generated from the facilities and any other financing sources to maintain and operate a financially viable project once the grant period has ended. Reviewers must make a finding of operational sustainability for any points to be awarded. Projects for which future grant funding is likely to be required in order to assure ongoing operations will not receive any points.

(2) *Demonstrated experience.* Reviewers will consider whether the applicant or its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the application. The reviewers may assign a higher point score to proposals that develop the internal capacity to provide or improve energy services in the eligible communities over other proposals that rely extensively on temporary outside contractors.

(3) *Community needs.* Reviewers will consider the applicant's assessment of community energy needs to be addressed by the proposed project as well as the severity of physical and economic challenges affecting the target communities. In determining whether one proposal should receive more points than another under this criterion, reviewers will consider the relative burdens placed on the communities and individual households by extremely high energy costs, the hardships created by limited access to reliable and affordable energy services and the availability of other resources to support or supplement the proposed grant funding.

(4) *Project evaluation and performance measures.* Reviewers will consider the applicant's suggested project evaluation and performance criteria. Reviewers may award higher points to criteria that are quantifiable, directly relevant to project goals, and reflect serious consideration than to more subjective performance criteria that do not incorporate variables that reflect a reduction in energy cost or improvement in service.

(5) *Coordination with rural development initiatives.* Proposals that include documentation confirming coordination with State rural development initiatives may be credited points for this criterion.

(c) *Priority considerations.* Subject to the limitation in paragraph (a) of this section, evaluation points may also be awarded for projects that advance identified priority interests identified in the grant announcement to assist the Agency in selecting among competing projects when the amount of funding requests exceed available funds. The grant announcement may incorporate all or some of the priority criteria listed below, and as discussed in paragraph (a) of this section, the grant announcement may supplement these criteria. The announcement will also specify the points that will be awarded to qualifying applications under these priority criteria.

(1) *Community economic hardship.* Economic hardship points may be awarded where the median household income for the target community is significantly below the State average or where the target community suffers from economic conditions that severely constrain its ability to provide or improve energy facilities serving the community. Applicants must describe in detail and document conditions creating severe community economic hardship in the proposal.

(2) *Rurality.* Priority consideration may be given to proposals that serve smaller rural communities. Applications will be scored based on the population of the largest incorporated cities, towns or villages or census designated places included within the grant's proposed target area as determined using the latest available population figures from the U.S. Census Bureau.

(3) *Unserved energy needs.* Points may be awarded to projects that extend or improve electric or other energy services to eligible communities or areas of eligible communities that do not have reliable centralized or commercial service.

(4) *Imminent hazard.* Additional points may be awarded for projects that correct a condition posing an imminent hazard to public safety, public welfare, the environment, or to a critical community or residential energy facility in immediate danger of failure because of a deteriorated condition, capacity limitation, or damage from a natural disaster or accident.

(5) *Cost sharing.* Projects that evidence significant commitments of funds, contributed property, equipment, or other in kind support for the project may be awarded additional points for this criterion where the aggregate value of these contributions exceed ten percent of total eligible project costs.

§ 1709.124 Grant award procedures.

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete the required environmental review under 7 CFR 1794 and to meet other pre-award conditions.

(b) *Letter of conditions.* The Agency will notify each applicant selected as a finalist in writing setting out the amount of grant funds and the terms and conditions under which the grant will be made and requesting that the applicant indicate in writing its intent to accept these conditions.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the selected applicant must notify the agency in writing within the time period indicated, of its acceptance of the conditions, or if the proposed certain conditions cannot be met, the applicant must so advise the Agency and may propose alternate conditions. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(d) *Grant agreement.* The Agency and the grantee must sign a grant agreement acceptable to the Agency prior to the advance of funds.

§§ 1709.125–1709.200 [Reserved]

Subpart C—Bulk Fuel Revolving Fund Grant Program

§ 1709.201 Purpose.

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) State Bulk Fuel Revolving Fund Grants. The purpose of this grant program is to assist State entities in establishing and supporting a revolving fund to provide a more cost-effective means of purchasing fuel for communities where the fuel cannot be shipped by means of surface transportation.

§ 1709.202 Policy. [Reserved]

§ 1709.203 Definitions.

As used in this subpart, the following definitions apply:

Eligible area means any area that is primarily dependent on delivery of fuel by water or air for a significant part of the year and where fuel cannot be shipped routinely by means of surface transportation either because of absolute physical constraints or because surface transportation is not practical or is prohibitively expensive.

Fuel means oil, diesel fuel, gasoline and other petroleum products, coal, and any other material that can be burned to make energy.

State entity means a department, agency, or instrumentality of any State.

Surface transportation means transportation by road, rail or pipeline.

§§ 1709.204–1709.206 [Reserved]

§ 1709.207 Eligible applicants.

Eligible applicants are restricted to State entities in existence as of November 9, 2000. Eligible State entities may partner with other entities, including other government agencies, in carrying out the programs funded by this program. Each applicant must demonstrate that it has the authority to enter into a binding agreement with the Federal Government to carry out the grant activities.

§ 1709.208 Use of grant funds.

Grant funds must be used to establish and support a revolving loan fund that facilitates cost effective fuel purchases for persons, communities, and businesses in eligible areas. Where a recipient State entity's existing program is authorized to fund multiple purposes, grant funds may only be used to the extent the recipient fund finances eligible activities.

§ 1709.209 Limitations on use of grant funds.

Not more than 4 percent of the grant award may be used for the planning and administrative expenses of the grantee.

§ 1709.210 Application process.

(a) *Applications.* The Agency will solicit applications on a competitive basis by publication of a grant announcement establishing the amount of funds available, the maximum grant award, the required application materials and where to obtain them, the evaluation and selection criteria and weights, and application deadlines. Unless otherwise specified in the announcement, applicants must file an original application package and two copies. Where provided in the grant announcement, applicants may submit electronic applications.

(b) *Required forms.* The grant application will use the Standard Application for Federal Assistance (SF–424 series or its successor) and other forms as provided in the grant announcement. The required forms must be completed, signed and submitted by a person authorized to submit the proposal on behalf of the applicants. Where provided in the grant announcement, applicants may file electronic versions of the forms in compliance with the instructions in the grant announcement.

(c) *Narrative proposal and required elements.* Each grant application must include a narrative proposal describing the project and addressing the following elements. The form, contents, and order of the narrative proposal will be specified in the grant announcement. Additional elements may be published in the applicable grant announcement.

(1) *Executive summary.* This summary of the proposal must identify the State entity applying for the grant and the key agency contact information (telephone and fax numbers, mailing address and e-mail address). The applicant must clearly state the amount requested in this section. It should briefly describe the program, including the estimated number of potential beneficiaries in eligible areas, their estimated fuel needs, the projects and activities to be financed through the revolving fund and how the projects and activities will improve the cost effectiveness of fuel procured.

(2) *Applicant eligibility.* The application must establish that the applicant is a State entity that was in existence as of November 9, 2000, and has the legal authority to enter into a financial assistance relationship with the Federal Government to carry out the grant activities.

(3) *Assessment of needs and potential beneficiaries.* The application must provide estimates of the number, location and population of potentially eligible areas in the State and their estimated fuel needs and costs. The section must also describe the criteria used to identify eligible areas, including the characteristics that make fuel deliveries by surface transport impossible or impracticable. The description of beneficiary communities should provide a detailed breakdown of the density profile of the area to be served by eligible projects. Indicate to what extent persons in eligible areas live outside of communities of 2,500 persons or more, communities of 5,000 or more or outside of communities of 20,000 or more. All population estimates should be based on Census Bureau data where available. All representations should be supported with exhibits such as maps, summary tables and references to official information sources.

(4) *Project description.* The application must:

(i) Describe the legal structure and staffing of the revolving fund proposal for fuel purchase support.

(ii) Identify the objectives of the project, the proposed criteria for establishing project funding eligibility and how the project is to be staffed, managed and financed.

(iii) Describe how the potential beneficiaries will be informed of the availability of revolving fund benefits to them.

(iv) Explain how the proposed revolving fund program will help provide a more cost-effective means of meeting fuel supply needs in eligible areas, encourage the adoption of financially sustainable energy practices, the adequate planning and investment in bulk fuel facility operations and maintenance and cost-effective investments in energy efficiency.

(v) If the revolving fund program is not yet operational, a proposed implementation schedule and milestones should be provided.

(5) *Demonstrated experience.* The application shall describe past accomplishments and experiences that are relevant to determine whether the applicant is capable of administering the grant project.

(6) *Budget.* The application must include a pro forma operating budget for the proposed fund and a description of all funding sources. The level of detail must be sufficient for reviewers to determine that grant funds will be used only for eligible purposes and to determine the extent to which the program is entirely dependent on grant funding or whether it has financial support from the State or other sources.

(7) *Performance measures and project evaluation.* The application must provide unambiguous and quantifiable measures that will be used to evaluate the success and cost-effectiveness of the revolving fund in assuring adequate fuel supplies for eligible communities and for assessing the fuel supply projects financed. The grant announcement may establish additional required elements that must be addressed in the narrative proposal of the application package.

§ 1709.211 Submission of applications.

Completed applications must be submitted to RUS at the address specified in the grant announcement on or before the deadline specified in the grant announcement. Instructions for submittal of applications electronically will be established in the grant announcement. Late applications will be rejected.

§ 1709.212 Application review.

The Agency will review all applications to determine whether the applicant is eligible and whether the application is timely, complete and sufficiently responsive to the requirements set forth in the grant announcement to allow for an informed review. Failure to address any of the required evaluation criteria or to submit all required forms will disqualify the proposal. The Agency reserves the right to contact the applicant to clarify information contained in the proposal to resolve issues related to eligibility and the grant request. Applications that are timely, complete, and responsive will be forwarded for further evaluation. Applications that are late, incomplete, or non-responsive will be rejected.

§ 1709.213 Evaluation of applications.

(a) The Agency will establish one or more rating panels to review and rate the grant applications. The panels may include persons not employed by the Agency.

(b) The rating panel will evaluate and rate all complete applications that meet the eligibility requirements according to the evaluation and selection criteria and weights established in the grant announcement. Panel members may make recommendations for conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements.

(c) After all proposals have been evaluated and scored, the proposals, the rankings, recommendations, and comments of the rating panel will be forwarded to the Administrator.

§ 1709.214 Administrator's review and selection of grant awards.

(a) The final decision to make a grant award is at the discretion of the Administrator. The Administrator shall consider the applications, the ranking, comments, and recommendations of the rating panel, and any other pertinent information before making a decision about which, if any, applications to approve, the amount of funds awarded, and the order of approval. The Administrator reserves the right not to make any awards from the applications submitted. When the Administrator decides not to make any awards, the Administrator shall document in writing the reason for the decision.

(b) Decisions on grant awards will be made by the Administrator after consideration of the applications, the rankings and recommendations of the rating panel. The Administrator may elect to award less than the full amount of grant requested by an applicant.

(c) The applications selected by the Administrator will be funded in rank order to the extent of available funds.

§ 1709.215 Consideration of unfunded applications under later grant announcements.

The grant announcement may provide that all eligible but unfunded proposals submitted under preceding announcements may also be considered for funding. The announcement shall describe whether and how prior applicants may request reconsideration and supplement their application material.

§ 1709.216 Evaluation criteria and weights.

Unless supplemented in the grant announcement, the criteria listed in this section will be used to evaluate proposals submitted under this program. The total points available and the distribution of points to be awarded per criterion will be identified in the grant announcement.

(a) *Program Design.* Reviewers will consider the financial viability of the applicant's revolving fund program design, the proposed criteria for establishing eligible projects and borrowers, and how the program will improve the cost effectiveness of bulk fuel purchases in eligible areas. Programs demonstrating a strong design and the ability to improve cost effectiveness will receive more points than applications that are less detailed.

(b) *Assessment of needs.* Reviewers will award more points to programs that serve or give priority to assisting more costly areas than those that serve populations that suffer from less severe physical and economic challenges.

(c) *Program evaluation and performance measures.* Reviewers may award more points to performance measures that are relevant to the project objective and quantifiable than to performance measures that are more subjective and do not incorporate variables that reflect a reduction in fuel cost or improvement in service.

(d) *Demonstrated experience.* Applicants may be awarded points for relevant experience in administering revolving fund or other comparable programs.

(e) *Rurality.* Reviewers may award more points to proposals that give priority in access to funds to communities with low population density or that are located in remote eligible areas than to proposals that serve eligible, but less remote and higher population density communities.

(f) *Cost sharing.* Although cost-sharing is not required under this program, projects that evidence significant funding or contributed property, equipment or other in kind support for the project may be awarded points for this criterion where the aggregate value of these contributions exceed 25 percent of the annual funding operations.

(g) *Additional priority considerations.* The grant announcement may provide for additional points to be awarded to projects that advance identified Agency priority interests under this program.

§ 1709.217 Grant award.

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether or not they have been selected for a grant award.

(b) *Letter of conditions.* The Agency will notify a selected applicant in writing, setting out the amount of grant approved and the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the selected applicant must complete, sign and return the Agency's ''Letter of Intent to Meet Conditions,'' or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(d) *Grant agreement.* The Agency and the grantee must execute a grant agreement acceptable to the Agency prior to the advance of funds.

§§ 1709.218–1709.300 [Reserved]

Subparts D–F [Reserved]

Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes

§ 1709.601 Policy.

This subpart prescribes the policies of the Rural Utilities Service (RUS) when it is subsequently determined that the recipient of an Assistance to High Energy Cost Rural Communities program loan or grant was not eligible for all or part of the financial assistance received or that the assistance received was used for unauthorized purposes. It is the policy of the Agency that when assistance under this part has been received by an ineligible recipient or used for unauthorized purposes the Agency shall initiate appropriate actions to recover from the recipient the sum that is determined to be ineligible or used for unauthorized purposes, regardless of amount, unless any applicable statute of limitation has expired. The Agency shall make full use of available authority and procedures, including but not limited to those available under 7 CFR part 3015, subpart N.

§§ 1709.602–1709.700 [Reserved]

§§ 1709.701–1709.999 [Reserved]

Dated: January 13, 2005.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 05–1880 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–279–AD; Amendment 39–13957; AD 2005–03–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that requires repetitive inspections of the nacelle strut-to-wing attachment structure, and repetitive overhaul of the diagonal brace and spring beam load paths, to maintain damage tolerance requirements and ensure long-term structural integrity; and follow-on and corrective actions if necessary. This action is necessary to ensure the structural integrity of the strut-to-wing load path and prevent separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 9, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes was published in the **Federal Register** on September 18, 2003 (68 FR 54680). That action proposed to require repetitive inspections of the nacelle strut-to-wing attachment structure, and repetitive overhaul of the diagonal brace and spring beam load paths, to maintain damage tolerance requirements and ensure long-term structural integrity; and follow-on and corrective actions if necessary.

Actions Since Notice of Proposed Rulemaking (NPRM) Was Issued

Since the NPRM was issued, the FAA has reviewed Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004. Revision 1 of the service bulletin describes procedures that are essentially the same as the procedures described in the original issue of the service bulletin, which was referenced in the NPRM as the appropriate source of service information. For certain airplanes, Revision 1 extends repetitive intervals for the baseline inspections. For certain other airplanes, Revision 1 revises the inspection method for the supplemental inspection of a certain structure, and reduces threshold and/or repetitive intervals of the supplemental inspections. Revision 1 also adds repetitive torque checks of the fasteners of lower spar fitting for Groups 1 and 2 airplanes.

We find that the additional work in Revision 1 of the service bulletin is acceptable for compliance with the requirements of this AD. Therefore, we have added new paragraph (f) to this AD to specify that, as an option, the required actions in paragraphs (b) through (e) of this AD may be accomplished in accordance with Revision 1. However, operators should note that if any action specified in this AD is done in accordance with Revision 1, then all of the actions in this AD and the additional actions specified in paragraph (g) of this AD must also be done in accordance with Revision 1 at the applicable compliance times specified in that service bulletin.

Also since the NPRM was issued, Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance (AMOC) for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Issue a Supplemental NPRM

One commenter requests that we issue a supplemental NPRM after Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004, is published. The commenter states that changes to the service bulletin will have a direct impact on the requirements of the proposed AD, and that ‘‘if this AD is deemed necessary, the AD should not be released until it incorporates that revision.’’ The commenter also states that since Revision 1 has not yet been published, the commenter does not fully understand the changes made to the service bulletin.

We do not agree with the request to issue a supplemental NPRM. As discussed previously, we have reviewed Revision 1 of the service bulletin, which was published after issuance of the NPRM. We agree that Revision 1 of the service bulletin is acceptable for compliance with the requirements of this AD and have added Revision 1 to this final rule as an option for accomplishing the requirements of paragraphs (b) through (e) of this AD. Therefore, it is not necessary to reopen the comment period by issuing an supplemental NPRM. No other change to the final rule is necessary in this regard.

Request To Include Changes to Revision 1 in This Final Rule

Another commenter requests that we include all changes to Revision 1 of the service bulletin in this final rule, since the changes significantly affect fleet maintenance and operations. The commenter states that the changes in Revision 1 are based on comments received from operators through telex traffic and meetings, and that the Boeing Designated Engineer Representative (DER) has recommended that the FAA approve Revision 1.

We partially agree with the commenter. For the reasons discussed previously, we have added Revision 1 of the service bulletin to this final rule as an option for accomplishing the requirements of paragraphs (b) through (e) of this AD. No other change to the final rule is necessary in this regard.

Request To Remove Detailed Inspection

One commenter considers unwarranted the detailed inspection ‘‘to verify correct installation anytime a fuse pin or secondary pin joint is disassembled within 1,200 flight-cycles or 18 months, whichever is earlier.’’ The commenter states that installation instructions ‘‘in the appropriate airplane maintenance manuals when followed and signed for by licensed maintenance personnel should not require a special subsequent inspection at future set time to verify correct installation.’’ The commenter also asserts that a required inspection item at the time of installation may be more effective and appropriate. We infer that the commenter requests that we remove the above-stated detailed inspection from the proposed AD.

We partially agree with the inferred request to remove the above-stated detailed inspection from this final rule. Although the original issue of the service bulletin recommends accomplishing that detailed inspection, Revision 1 does not recommend its accomplishment for compliance with this final rule. Therefore, the commenter may choose to accomplish Revision 1, which has been added as an alternative source of service information for this final rule as discussed previously. If the commenter chooses to accomplish the original issue of the service bulletin, under the provisions of paragraph (h) of this final rule, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety. Therefore, no further change to the final rule is necessary in this regard.

Request To Revise Corrective Action

One commenter requests that we revise paragraph (e) of the proposed AD, so that defects found during the baseline inspections may be repaired in accordance with an FAA-acceptable method. The commenter states that, while Parts 1 through 9 of the service bulletin specify to contact Boeing for rework requirements and additional inspections if any damage is found or structural integrity is not verified, paragraph (e) of the proposed AD would require that these corrective actions be repaired per a method approved by the FAA, or per data approved by a Boeing DER. The commenter considers the method of repair specified in paragraph (e) of the proposed AD unnecessarily burdensome, especially for correcting relatively simple defects such as missing or broken fasteners. Furthermore, the commenter believes that the corrective action for a defect found during a normal maintenance period should not require AMOC approval.

We do not agree with the request to revise paragraph (e) of this final rule because of the known, possible consequences of discrepancies found in the nacelle strut-to-wing attachment structure. We also do not agree with the request because the damage allowables and corrective action are undefined in the service bulletin. We retain approval authority for repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. Therefore, no change to the final rule is necessary in this regard.

Request for Flight Standards District Office (FSDO) Approval

One commenter requests that we revise the proposed AD to allow approval for changes in compliance time ''through the operators Flight Standards District Office as per their established procedures,'' rather than by the Manager of the Seattle ACO. The commenter states that the repetitive baseline inspections, and possibly the supplemental inspections, should be given the same flexibility as any other maintenance program requirement. The commenter also asserts that, in order for operators to integrate the proposed AD into their FAA-approved maintenance program, the approval of inspection escalation should be made through the operator's Flight Standards District Offices.

We do not agree. The inspection interval of the supplemental inspection is based on complex engineering analysis that meets the damage tolerance requirements of Section 25.571 (''Damage—tolerance and fatigue evaluation of structure'') of the Federal Aviation Regulations (14 CFR 25.571) as upgraded in the Type Certificate Data Sheet for Boeing Model 747 series airplanes. If that inspection interval is changed, the damage tolerance requirements may not be met.

Separation of the strut and engine from the airplane prior to strut modification resulted in two accidents with fatalities on Model 747 series airplanes. In addition, there have been numerous structural issues even after strut modification. Under the provisions of paragraph (h) of this final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. Therefore, no change to the final rule is necessary in this regard.

Consideration for a Change to the Maintenance Program

Two commenters consider the proposed AD an inappropriate use of an airworthiness directive. One commenter states that the recommendations specified in the original issue of the service bulletin appear better suited for implementation via Maintenance Review Board (MRB) and associated Maintenance Planning Data (MPD) documents, with the exception of the check for the part number of the side link fuse pins.

Another commenter states that the service bulletin/AD process is an inappropriate method for enacting changes to the required maintenance programs. The commenter also states that the FAA should work together with manufacturers and operators to develop a better method of revising the maintenance, inspection, and overhaul requirements for large, transport category aircraft. Furthermore, the commenter believes ''that appropriate revisions to the Maintenance Review Board Document, the Maintenance Planning Document and/or the Aircraft Limitation Instruction are warranted.'' The commenter also notes that the proposed AD would be applicable to all future Model 747 series airplanes that are yet to be built with the current strut design.

We do not agree that the proposed AD is an inappropriate use of an airworthiness directive. We are requiring the post strut modification inspections in Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001; or Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004; to meet the upgraded certification basis of the strut-to-wing attachments as listed in the Type Certificate Data Sheet for Model 747 series airplanes. The certification basis was upgraded to a higher level of safety due to accidents involving the strut-to-wing attachments. To adequately address the unsafe condition, we are mandating the post strut modification inspections as recommended in the service bulletin by the airplane manufacturer to meet the new certification basis.

Furthermore, certain airplanes have been delivered with MPD documents that do not require accomplishing these inspections, so we are mandating the inspections with an AD. Note that an operator is only required to accomplish inspections included in the MPD delivered with the airplane; inspections added in subsequent revisions to the MPD are not mandatory until we mandate them with an AD. Therefore, we find that this final rule is the least complex and most timely method to mandate new inspections, if the inspections were not included in the MPD delivered with an airplane. For commonality, we have mandated the inspections for all Model 747 series airplanes through a service bulletin developed by the manufacturer. We may consider revising the applicability of the AD if the inspections in the service bulletin are incorporated in the airworthiness limitation section of the MPD, which is provided with the airplane upon delivery from the production line for future airplanes. Therefore, no change to the final rule is necessary in this regard.

Additional Change to This AD

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins specify to report damaged or cracked fuse pins to the manufacturer, this AD would not require those actions. We do not need this information from operators.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 991 airplanes of the affected design in the worldwide fleet. The FAA estimates that 187 airplanes of U.S. registry will be affected by this AD.

It will take approximately 280 work hours per airplane to accomplish the repetitive baseline, supplemental, and fuse pin inspections at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspections, per inspection cycle, on U.S. operators is estimated to be $3,403,400 for the fleet, or $18,200 per airplane.

It will take approximately 48 work hours per airplane to overhaul the diagonal brace, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the overhaul, per overhaul cycle, on U.S. operators is estimated to be $583,440 for the fleet, or $3,120 per airplane.

It will take approximately 40 work hours per airplane overhaul the spring beam, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the overhaul, per overhaul cycle, on U.S. operators is estimated to be $486,200 for the fleet, or $2,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–03–01 Boeing: Amendment 39–13957. Docket 2001–NM–279–AD.

Applicability: All Model 747 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the strut-to-wing load path and prevent separation of the strut and engine from the airplane, accomplish the following:

Compliance Times

(a) Where the compliance times for the initial and repetitive baseline and supplemental inspections in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001; or Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004; specify a compliance time interval calculated ''from the release of this service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.''

Inspections/Follow-On Actions

(b) Do the initial and repetitive baseline and supplemental inspections of the nacelle strut-to-wing attachment structure for discrepancies (including cracks, corrosion, or damage; and loose, missing, or broken fasteners), and do the applicable follow-on actions; by doing all the actions in Part 1 through Part 9 of the Work Instructions of Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001. Do the inspections (including inspections for correct installation of hardware and part numbers) and follow-on actions at the applicable times specified in Figure 1 of the service bulletin.

(c) Do the initial and repetitive overhauls of the diagonal brace and spring beam load paths by doing all the actions in Part 10 and Part 11 of the Work Instructions of Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001. Do the initial and repetitive overhauls at the applicable times specified in Part 10 and Part 11 of the service bulletin.

(d) Do the initial and repetitive inspections of the fuse pins and secondary pins of the strut-to-wing attachment by doing all the actions in Part 12 of the Work Instructions of Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001. Do the inspections at the times specified in Part 12 of the service bulletin.

Corrective Actions

(e) If any discrepancy is found during any inspection required by this AD: Before further flight, do all applicable corrective actions specified in Part 1 through Part 12 of the Work Instructions of Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001. Do the applicable corrective actions per the service bulletin. If the service bulletin specifies to contact the manufacturer for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or per data meeting the type certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings.

Optional Service Bulletin

(f) As an option, paragraphs (b) through (e) of this AD may be done in accordance with Part 1 through Part 12, as applicable, of the Work Instructions of Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004, at the applicable times specified in the service bulletin. If any action specified in paragraphs (b) through (e) of this AD is done in accordance with Revision 1 of the service bulletin, do all of the actions specified in paragraphs (b) through (e) of this AD and the additional actions specified in paragraph (g) of this AD, in accordance with Revision 1 of the service bulletin. If the service bulletin specifies to contact the manufacturer for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA, or per data meeting the type certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings.

Additional Actions for Optional Service Bulletin

(g) If, as an option, any action specified in paragraphs (b) through (e) of this AD is done in accordance with Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004, of the service bulletin, do a detailed inspection of all strut-to-wing attach joints to determine the part number of any dual side link fuse pin; and install the correct fuse pin if any incorrect fuse pin is found; by doing all of the actions specified in the ''Initial Base Line Inspection Requirements'' of the Work Instructions of Revision 1 of the service bulletin. Do these actions at the applicable times specified in Revision 1 of the service bulletin.

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

No Reporting Requirement

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

Alternative Methods of Compliance (AMOC)

(i)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve AMOCs for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for a repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(j) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2182, dated July 12, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(k) This amendment becomes effective on March 9, 2005.

Issued in Renton, Washington, on January 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1724 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19444; Directorate Identifier 2004–CE–33–AD; Amendment 39–13960; AD 2005–03–04]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Pacific Aerospace Corporation, Ltd. (Pacific Aerospace) Model 750XL airplanes. This AD requires you to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. We are issuing this AD to replace the above identified rivets on the aileron pushrod ends and elevator control pushrod ends, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

DATES: This AD becomes effective on March 21, 2005.

As of March 21, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Pacific Aerospace Corporation, Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: 64 7 843 6144; facsimile: 64 7 843 6134. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19444.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 302, Kansas City, MO 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, recently notified FAA that an unsafe condition may exist on all Pacific Aerospace Corporation, Ltd. (Pacific Aerospace) Model 750XL airplanes. The CAA reports occurrences of loose type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends on Model 750XL airplanes in service in New Zealand.

What is the potential impact if FAA took no action? Any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pacific Aerospace Corporation, Ltd. (Pacific Aerospace) Model 750XL airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 22, 2004 (69 FR 67864). The NPRM proposed to require you to replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 6 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the replacement of any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $65 per hour = $390	$37 for 100 Cherry Max 3213–4–2 or 3243–4–2 (oversize nominal 1⁄8 inch) rivets.	$427	$427 × 6 = $2,562

The Cherry Max 3213–4–2 or 3243–4–2 rivets are available in a specially sealed 100-count package. The costs above cover this 100-count package although you may need less than 100 rivets.

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under ADDRESSES. Include ''Docket No. FAA–2004–19444; Directorate Identifier 2004–CE–33–AD'' in your request.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–03–04 Pacific Aerospace Corporation, Ltd.: Amendment 39–13960; Docket No. FAA–2004–19444; Directorate Identifier 2004–CE–33–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on March 21, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 750XL airplanes, all serial numbers that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. The actions specified in this AD are intended to replace the above identified rivets on the aileron pushrod ends and elevator control pushrod ends, which, if not replaced, could result in loose mechanical elements in the control systems. This could lead to control anomalies and loss of airplane control.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
Replace any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends with a new Cherry Max 3213–4–2 or 3243–4–2 (oversize nominal 1⁄8 inch) rivet.	With 50 hours time-in-service (TIS) after March 21, 2005 (the effective date of this AD), unless already done.	Follow the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Corporation Mandatory Service Bulletin No. PACSB/XL/007, dated June 22, 2004.
(2) Do not install:		
(i) Any type TLP–D or TLED rivets on the aileron pushrod ends and elevator control pushrod ends; or. (ii) Any aileron pushrods or elevator control pushrods with type TLP–D or TLED rivets on the ends..	As of March 21, 2005 (the effective date of this AD).	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 302, Kansas City, MO 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) New Zealand Airworthiness Directive Number DCA/40XL/1, dated June 24, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Pacific Aerospace Corporation Mandatory Service Bulletin No. PACSB/XL/007, dated June 22, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Pacific Aerospace Corporation, Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: 64 7 843 6144; facsimile: 64 7 843 6134. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19444.

Issued in Kansas City, Missouri, on January 24, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1723 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–221–AD; Amendment 39–13958; AD 2005–03–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes; and Model 757–200 and –200CB Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes; and Model 757–200 and –200CB series airplanes, that requires inspection of the applicable body station frames for open body station frames and related investigative/corrective actions; and installation of lanyard hook brackets and lanyard assemblies under the air conditioning overhead ducts, as applicable. This action is necessary to prevent loosened or disconnected overhead ducts from causing ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin, which could result in inadequate height for safe exit in the event of an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective March 9, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes; and Model 757–200 and –200CB series airplanes was published in the **Federal Register** on May 11, 2004 (69 FR 26054). That action proposed to require inspection of the applicable body station frames for open body station frames and related investigative/corrective actions; and installation of lanyard hook brackets and lanyard assemblies under the air conditioning overhead ducts, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for an Optional Terminating Action

Two commenters request that we add Boeing Service Letter 757–SL–21–057–A, including Attachments I and II, dated March 24, 2004, as an alternative method of compliance (AMOC) for the installation of lanyards on Boeing Model 757 series airplanes. As justification, one commenter states that the duct manufacturer has created replacement overhead ducts with nearly 50 percent greater ultimate strength than the ducts delivered on the affected airplanes. The commenter also asserts that, because of the reduced duct dimensions and air loads, there has not been any tension failure of ducts forward of station 550 or aft of station 1389 on Model 757–200 series airplanes.

The other commenter states that the new, improved overhead ducts eliminate the need to install lanyards, since they are more robust and resistant to de-coupling, delamination, moisture ingress, and breakaway at attach points. The commenter also points out that the FAA has approved these ducts through the parts manufacturer approval process.

We agree with the commenters. Since issuance of the proposed AD, we have reviewed Boeing Service Letter 757–SL–21–057–A, including Attachments I and II, dated March 24, 2004. For certain Model 757 series airplanes, the Boeing service letter describes procedures for replacing the original design foam ducts with new, improved foam ducts. We find that this optional replacement adequately addresses the unsafe condition in this AD on certain Model 757–200 and –200CB series airplanes. The optional replacement would eliminate the need for the general visual inspection and corrective actions, if applicable, required by paragraph (c) of this AD. Therefore, we have inserted a new paragraph (d) into this final rule and relettered the subsequent paragraphs accordingly.

Request To Extend Compliance Time

One commenter requests that we extend the compliance time for installing lanyards from 60 months to at least 63 months, so affected operators can perform the installation during a scheduled heavy maintenance interval. The commenter states the 60-month interval does not correspond with any maintenance interval for Boeing Model 757 series airplanes or with the Maintenance Review Board (MRB) heavy maintenance visit (4C), which is scheduled at a 72-month interval. The commenter also asserts that airplane downtime would be significant if the proposed installation is scheduled outside of a heavy maintenance visit. As justification for the request, the commenter says that failure of the ducts is evident by the appearance of the ceiling panels, which could be discovered and corrected during the MRB zonal inspection of the main cabin that occurs every 18 months (at 1C). In its experience, the commenter believes this interval is sufficient. The commenter also states ''* * * a 63-month compliance time would leave one interval at no more than (allowing for prior yield loss) 12 months which would be less than the 1C interval.''

We agree with the commenter's request to extend the compliance time. We intended to require the inspection and installation of lanyards at intervals that would coincide with regularly scheduled maintenance visits for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, we now recognize that 72 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. We have revised paragraphs (b)(1), (b)(2), and (c) of the final rule to require a compliance time of 72 months. We do not consider that this extension will adversely affect safety.

Request To Withdraw Proposed AD

One commenter objects to requiring an AD to address the unsafe condition in Boeing Special Attention Service Bulletin 737–21–1131, Revision 2, dated April 18, 2002, because of the large expense of complying with the proposed AD. For its 67 affected airplanes, the commenter states that it would cost $1,500,000, and that the manufacturer would not offer any reimbursement for this expense. The commenter also states that the price of the modification kit increased 40 percent after issuance of the proposed AD. We infer that the commenter is asking us to withdraw the proposed AD.

We do not agree with the inferred request, since the installation of lanyards is necessary to prevent loosened or disconnected overhead ducts from causing ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin. This condition could result in inadequate height for safe exit in the event of an emergency evacuation. While we acknowledge the concern of the commenter, we cannot control the cost of the manufacturer's modification kit or get involved in any discussion related to reimbursement from the manufacturer. The cost impact of this AD is based on the best data available provided to us by the manufacturer. No change to this AD is necessary in this regard.

Request To Allow Repetitive Inspections and Optional Terminating Action

Two commenters request that, as an alternate method of compliance, we allow repetitive inspections of the overhead ducts and replacement of deteriorating ducts before they fail. One commenter requests specifically that the repetitive inspections are done at every C-check, and that the replacement is done in accordance with Boeing Service Letter 757–SL–21–057–A, including Attachments I and II, dated March 24, 2004. The commenter states that this service letter provides procedures for installing improved overhead ducts, which substantially increases the structural support for the ducts and ceiling panels. The commenter provides no justification for the repetitive inspections.

The other commenter believes that regular inspections of the overhead ducts for air leakage and the addition of repetitive inspections of the duct holding clamps/brackets and ceiling supports to the regular inspection of the overhead duct assembly by borescope method would sufficiently address the unsafe condition in the proposed AD. The commenter asserts that these inspections would allow early and proper action to prevent the unsafe condition. The commenter states that its proposed AMOC is adequate, since it has never discovered the unsafe condition addressed by the proposed AD on any of its own or its customer's affected airplanes.

We do not agree with the commenters' request to allow repetitive inspections of the overhead ducts. However, as stated in our response to a previous comment, we agree that replacement of the overhead ducts in accordance with Boeing Service Letter 757–SL–21–057–A adequately addresses the unsafe condition in this AD for certain Model 757–200 and –200CB series airplanes and eliminates the need for the actions required by paragraph (c) of this AD.

We have investigated the potential for repetitive inspections of the overhead ducts, either by borescope or other methods, as an alternative to installing lanyards and have determined that an inspection program is impracticable due to the nature of the duct design and failure mode. It has been shown that, over time, the overhead ducts will deteriorate. In addition, operators have reported overhead ducts with air leakage, moisture ingress, delamination, broken isolator mounts, and support mounts that have pulled through the duct. Furthermore, the manufacturer has told us that it cannot identify the specific damage to the air ducts, which would indicate where failure (the ceiling panels dropping into the passenger evacuation zone) is imminent.

While there have been very few reported instances where the overhead duct failed and consequently allowed the panels to fall into the passenger cabin, such a failure has been encountered. This failure has been linked to a deficiency in the design of the affected airplanes and could cause the inboard edge of the ceiling panel to be in the passenger evacuation zone. This situation will impede egress in the event of an emergency evacuation.

Request To Revise Cost Impact

One commenter questions our estimate of 27 work hours for installing lanyards in the proposed AD, where the service bulletin estimates 39 work hours, which includes time to gain access to the area. The commenter states that installing the attach brackets for the lanyards involves significant problems in gaining access and working in a confined space. The commenter also states that a review of the work required for its fleet of Model 757 series airplanes indicated that the estimate in the service bulletin is already very conservative. We infer that the commenter requests that we revise the Cost Impact for this AD.

We do not agree with the inferred request because the purpose of the Cost Impact section is only to estimate the costs of compliance with the AD. As stated in this and the proposed AD, the cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Therefore, no change to this AD is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,187 airplanes of the affected design in the worldwide fleet. The FAA estimates that 984 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $65 per work hour. The estimated maximum total cost for all airplanes affected by this AD is $10,607,648.

TABLE.—COST IMPACT

Model	U.S. registered airplanes	Work hours per airplane	Labor cost per airplane	Parts cost per airplane	Total cost
737–300, –400, and –500 series airplanes.	665	28 (Identify the body frames, install support brackets; rework and install insulation; install lanyard and hook brackets).	$1,820	$6,925 to $9,650 (Depending on overhead duct installation configuration).	$5,815,425 to $7,627,550 (Depending on overhead duct installation configuration), or $8,745 to $11,470 per airplane.
757–200 and –200CB series airplanes.	319	27 (Examine station frame, install bracket, lanyard, and insulation).	1,755	7,587	$2,980,098, or $9,342 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–03–02 Boeing: Amendment 39–13958. Docket 2003–NM–221–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Boeing model	As listed in
Model 737–300, –400, and –500 series airplanes.	Boeing Special Attention Service Bulletin 737–21–1131, Revision 2, dated April 18, 2002.
Model 757–200 and –200CB series airplanes.	Boeing Special Attention Service Bulletin 757–21–0088, dated April 18, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent loosened or disconnected overhead ducts from causing ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin, which could result in inadequate height for safe exit in the event of an emergency evacuation, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the applicable service bulletins listed in Table 1 of this AD.

Inspection and Related Investigative/Corrective Actions

(b) For Model 737–300, –400, and –500 series airplanes, do the actions required in paragraphs (b)(1) and (b)(2) of this AD at the specified compliance times, in accordance with the Accomplishment Instructions of the service bulletin.

(1) Within 72 months after the effective date of this AD, do a general visual inspection at the applicable body station frames for open body station frames; and, before further flight, do all the related investigative/corrective actions, as applicable; by accomplishing all of the actions in paragraph 3.B. of the service bulletin.

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

(2) Within 72 months after the effective date of this AD, do the actions required in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For Groups 1 and 3 airplanes identified in the service bulletin: Install the lanyard hook brackets and each lanyard assembly under the air conditioning (AC) overhead ducts in accordance with paragraph 3.C. of the service bulletin.

(ii) For Group 2 airplanes identified in the service bulletin: Install the lanyard hook brackets and the lanyard assemblies under the AC overhead ducts by accomplishing all of the actions in paragraph 3.D. of the service bulletin.

(c) For Model 757–200 and –200CB series airplanes: Within 72 months after the effective date of this AD, do a general visual inspection of the applicable body station frames for open body station frames; and, before further flight, do all the corrective actions, as applicable; by accomplishing all of the actions in the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(d) For Model 757–200 and –200CB series airplanes: Accomplishing the replacement of the original design foam ducts with Saint-Gobain design foam ducts by doing all of the actions in Attachments I and II of Boeing Service Letter 757–SL–21–057–A, dated March 24, 2004, terminates the actions required by paragraph (c) of this AD.

Credit for Actions Accomplished Per Previous Service Bulletins

(e) Actions accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–21–1131, original release, dated December 20, 2001; or Revision 1, dated January 25, 2002; are acceptable for compliance with the requirements of paragraph (b) of this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(g) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 737–21–1131, Revision 2, dated April 18, 2002; and Boeing Special Attention Service Bulletin 757–21–0088, dated April 18, 2002; as applicable. The optional terminating action, if accomplished, shall be done in accordance with Boeing Service Letter 757–SL–21–057–A, including Attachements I and II, dated March 24, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(h) This amendment becomes effective on March 9, 2005.

Issued in Renton, Washington, on January 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1722 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20059; Airspace Docket No. 05–ACE–1]

Modification of Class E Airspace; Rolla/Vichy, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Rolla/Vichy, MO. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Rolla/Vichy, MO reveals neither area complies with criteria for extensions nor reflects the current Rolla National Airport airport reference point (APR). Also, the legal descriptions of both area are not in proper format. These airspace areas and their legal descriptions are modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 3, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20059/Airspace Docket No. 05–ACE–1, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal

Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Rolla/Vichy, MO. An examination of controlled airspace for Rolla/Vichy, MO revealed that neither airspace area is in compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The extension to the Class E surface area is redefined relative to the Vichy VOR/DME, increased in length from 5.7 to 7 miles from the facility and decreased in width from 2.6 to 1.5 miles each side of centerline. The extension of the Class E airspace area extending upward from 700 feet AGL is also redefined relative to the Vichy VOR/DME but its length is decreased from 7.4 to 7 miles from the facility and its width decreased from 2.6 to 1.5 miles each side of centerline. The Rolla National Airport ARP is corrected in both legal descriptions. These modifications bring the legal descriptions of the Rolla/Vichy, MO Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C, Class E airspace areas designed as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20059/Airspace Docket No. 05–ACE–1.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Rolla/Vichy, MO

Rolla/Vichy, Rolla National Airport, MO
(Lat. 38°07′39″ N., long. 91°46′10″ W.)
Vichy VOR/DME
(Lat. 38°09′15″ N., long. 91°42′24″ W.)

Within a 4.1-mile radius of Rolla National Airport and within 1.5 miles each side of the Vichy VOR/DME 067° radial extending from the 4.1-mile radius of the airport to 7 miles northeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E5 Rolla/Vichy, MO

Rolla/Vichy, Rolla National Airport, MO
(Lat. 38°07′39″ N., long. 91°46′10″ W.)
Vichy VOR/DME
(Lat. 38°09′15″ N., long. 91°42′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Rolla National Airport and within

1.5 miles each side of the Vichy VOR/DME 067° radial extending from the 6.6-mile radius of the airport to 7 miles northeast of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on January 18, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–1920 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 4984]

RIN 1400–AB94; 1400–AB95

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Department of State's proposed rule to revise the Schedule of Fees for Consular Services (''Schedule of Fees'' or ''Schedule''), with four changes, one incorporating and finalizing an already effective additional exemption to the MRV fee and the others adding three new fees authorized by the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). None of these changes are being made in response to public comments. Only one comment was received during the period for public comment, but the Department has decided that the comment does not warrant any changes in the proposed rule. The additional exemption being added to the Schedule simply incorporates and finalizes an exemption that has been in effect during the comment period on the revised Schedule as a result of an Interim Rule issued pursuant to a separate but related rulemaking. No comments on the additional exemption were received during the comment period for that rulemaking. The three new fees are being added because they were established by legislation enacted after the comment period for this rulemaking closed. The addition of these fees does not require public comment. The proposed rule, modified only to incorporate the new exemption and the new legislatively established fees, is therefore adopted as final.

EFFECTIVE DATE: This rule is effective March 8, 2005.

FOR FURTHER INFORMATION CONTACT: Phillip Min, Office of the Executive Director, Bureau of Consular Affairs, fax: 202–663–2499; e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a proposed rule in the **Federal Register** at 69 FR 42913–42919 on July 19, 2004 (Public Notice 4765, RIN 1400–AB94), proposing to amend sections of part 22 of Title 22 of the Code of Federal Regulations. Specifically, the rule proposed changes to the Schedule of Fees for Consular Services, including seven increases and two decreases. The Department's proposed rule solicited comments, and one general comment sent by e-mail was received. The comment, dated July 19, 2004, criticized all consular fees as still being too low.

After publication of the aforementioned proposed rule, the Department also published a separate but related interim rule in the **Federal Register** at 69 FR 53618–53619 on September 2, 2004 (Public Notice 4809, RIN 1400–AB95), amending the Schedule of Fees for Consular Services to include an exemption from the nonimmigrant visa application processing fee for family members traveling to the United States for the funeral or burial of a U.S. Government employee killed in the line of duty or to visit a U.S. Government employee critically injured in the line of duty. The amendment became effective upon publication on September 2, 2004. Interested parties were invited to submit written comments by September 24, 2004. No comments were received. The exemption added to the existing Schedule of Fees by the amendment is finalized and carried forward in the Schedule of Fees for Consular Services as published in this final rule.

As explained when the revised Schedule of Fees was published as a proposed rule, the majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701, and/or 22 U.S.C. 4219, which, as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by embassies and consulates. Other fees are established pursuant to more specific statutory authorities, some of which provide for full or partial exemptions.

With the exception of nonimmigrant visa reciprocity fees, which are established based on the practices of other countries, and fees that are established at amounts specified by statute, all consular fees are established on a basis of cost recovery and in a manner consistent with general user charges principles, regardless of the specific statutory authority under which they are promulgated. The Department of State is required to review consular fees periodically to determine the appropriateness of each fee in light of applicable provisions of OMB Circular A–25, and it was as a result of such a review that the amendments to the Schedule of Fees were proposed. This review attempted to identify the fully allocated costs of consular services (direct and indirect).

In situations where services are provided often enough to develop a reliable estimate of the average time involved, a flat service fee was adopted. In other situations where services are provided infrequently, the consular hourly rate was made the basis of the fee. In either case, the fee is designed to recover some or all—but not more than—actual fully allocated costs the Department expects to incur over the period that the Schedule will be in effect. When the fee is set below costs, the remaining cost is either recovered through allocation to related services for which fees are charged, or will be covered through appropriations. (Detailed information concerning the methodology of the study is available from the Bureau of Consular Affairs.)

Based on this effort and subsequent analysis, the Department proposed adjustments to the Schedule of Fees, including the fee to search Department of State files to verify an applicant's U.S. citizenship (from $45 to $60); the Diversity Visa (DV) Lottery surcharge for a diversity immigrant visa application (from $100 to $375); the Affidavit of Support Review fee (from $65 to $70); the fee for determining returning resident status (from $360 to $400); the fee for a transportation letter issued to a Legal Permanent Resident Alien (LPRA) who needs a transportation letter to reenter the U.S. (from $300 to $165); the fee for waiver of the two-year return residency requirement (from $230 to $215); the fees for processing Letters Rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases (from $650 to $735); and the fee for consular time (from $235 to $265).

In addition, the fee for loan processing was combined with the fee for assistance regarding the welfare and whereabouts of a U.S. citizen, including child custody inquiries. This is a purely technical change in the Schedule.

Significantly, Division B, Title IV (Diplomatic and Consular Programs appropriation) of the Consolidated Appropriations Act, 2005 (Public Law 108–447), authorized two new fees while section 426 of Division J, title IV

(Visa Reform) of the same Act authorized a third. In each of these three cases, the amount of each fee was also specified. These three fees are incorporated in the Schedule as new items 8 (a passport surcharge of $12 to enhance the security of the passport document), 25 (a fraud prevention and detection fee of $500 for H–1B and L visa applicants), and 36 (an immigrant visa surcharge of $45 to enhance the security of the immigrant visa).

Analysis of Comments

As noted, the proposed rule (Public Notice 4765 at 69 FR 42913–42919) was published for comments on July 19, 2004. During the comment period, which closed August 18, 2004, the Department received only one comment, which criticized all consular fees as still being too low. The commenter said that the Department should increase all of the fees rather than provide below-cost services to non-U.S. citizens. In many cases, of course, the fees are in fact paid by U.S. citizens for services to U.S. citizens. Leaving that aside, in virtually all cases the fees result in full cost recovery either by (1) setting the fee for the specific service at full cost; (2) recovering the cost of a service through both the fee for the specific service and a fee for a related service (*e.g.,* the passport fee recovers costs of certain overseas citizens services for which there is no specific, separate fee or for which the separate fee is set below cost); or (3) by shifting the cost of a service to other users, when specifically authorized by the statute. A few fees (such as the fee for a nonimmigrant visa application, the fee for refugee parole, the fee for documentary services, and the fee for scheduling depositions) are set below actual cost; in each of these cases, the Department has determined that it is in the public interest to recover the difference from U.S. Government appropriations so as not to make these particular services prohibitively expensive for the public, and/or because there is a public as well as private benefit from performance of the service.

Regulatory Findings

Administrative Procedure Act

On July 19, 2004, the Department published a proposed rule comprehensively amending its Schedule of Fees and providing a 30-day period for public comments (69 FR 42913–42919, Public Notice 4765, RIN 1400–AB94). Subsequently, it published an interim rule in the **Federal Register** (69 FR 53618–53619, Public Notice 4809, RIN 1400–AB95) that amended the existing Schedule of Fees effective immediately only to include as Item Number 22 (g) an exemption from the nonimmigrant visa application processing fee for family members traveling to the United States for the funeral or burial of a U.S. Government employee killed in the line of duty or to visit a U.S. Government critically injured in the line of duty. The change made by that interim rule, which became effective upon publication on September 2, 2004, is thus now part of the Schedule of Fees being comprehensively amended, and the exemption is carried forward and included as final in the Schedule of Fees for Consular Services, as published in this Final Rule.

The Consolidated Appropriations Act, 2005, signed into law by the President on December 8, 2004, authorized three new fees and specified the amount of each. These are included in the Schedule below in Items 8, 25, and 36. Item 8, a new $12 passport surcharge, applies to all applicants except those who are exempt from passport fees per item 4 of the Schedule. The surcharge is designed to recover the costs of consular services in support of enhanced border security that are in addition to those covered by the passport fees in effect on January 1, 2004. This fee is specifically authorized by Division B, Title IV (Diplomatic and Consular Programs appropriation). Item 25 is a fraud prevention and detection fee of $500. The fee has both a domestic and an overseas component. Abroad, the State Department, through its consuls, will collect the fee from a principal applicant for an ''L'' nonimmigrant visa who is covered under a blanket petition as provided for in section 214(c)(2) (A) of the Immigration and Nationality Act (INA). This fee is specifically authorized by subsections 214(c)(12)(B) and (C) of the INA as amended by section 426 of Division J, title IV (Visa Reform). Unlike the other two fees, it will take effect for nonimmigrant visa applications filed on or after ninety days from enactment of the Consolidated Appropriations Act—*i.e.,* on or after March 8, 2005 (90 days from Dec. 8, 2004), in accordance with section 426(c). Item 36, a new $45 immigrant visa surcharge, applies to all applicants for immigrant visas, including Diversity Visas. The surcharge was added to recover costs of consular services in support of enhanced border security that are in addition to those covered by the immigrant visa fees in effect on January 1, 2004. This fee is specifically authorized by Division B, Title IV (Diplomatic and Consular Programs appropriation). Since these three new fees have been statutorily authorized and the amounts are statutorily established, the Department for good cause pursuant to 5 U.S.C. 553(b)(B) finds that public comment on the fees is unnecessary.

The final rule will be effective March 8, 2005, in accordance with 5 U.S.C. 553(d). All changes in the Department's existing fees will take effect at that time.

Regulatory Flexibility Act/Executive Order 13272: Small Business

The changes made by this regulation are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601–612) and section 3(b) of Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive

Order. In addition, OMB has been provided with a copy of the proposed regulation.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor would the regulation have federalism implications warranting the application of Executive Orders 12372 and 13132.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

■ Accordingly, an amendment to part 22 is amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Pub. L. 108–447, 118 Stat. 2809 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Section 22.1 is revised to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the U.S. Department of State's Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Execution: Required for first-time applicants and others who must apply in person [01-Passport Execution]	$30.
2. Passport Application Services for:	
(a) Applicants age 16 or over (including renewals) [02-Adult Passport]	55.
(b) Applicants under age 16 [03-Minor Passport]	40.
(c) Passport amendments (extension of validity, name change, etc.) [04-Amendment]	No fee.
3. Expedited service: Three-day processing and/or in-person service at a U.S. Passport Agency (not applicable abroad) [Expedited Service].	60.
4. Exemptions: The following applicants are exempted from passport fees:	
(a) Officers or employees of the United States and their immediate family members (22 U.S.C. 214) and Peace Corps Volunteers and Leaders (22 U.S.C. 2504(a)) proceeding abroad or returning to the United States in the discharge of their official duties [05-Passport Exempt].	No fee.
(b) U.S. citizen seamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214) [05-Passport Exempt].	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214) [05-Passport Exempt].	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2603) [05-Passport Exempt].	No fee.
5. Travel Letter: Provided as an emergency accommodation to a U.S. citizen returning to the United States when the consular officer is unable to issue a passport book. (Consular time charges, item 75, may apply) [06–U.S.C. Travel Letter].	No fee.
6. File search and verification of U.S. citizenship: When applicant has not presented evidence of citizenship and previous records must be searched (except for an applicant abroad whose passport was stolen or lost abroad or when one of the exemptions is applicable) [07–PPT File Search].	60.
7. Application for Report of Birth Abroad of a Citizen of the United States [08-Report Birth Abroad]	65.
8. Passport security surcharge [09-Passport Surcharge]	12.
Items nos. 9 through 10 vacant)	
Overseas Citizens Services **Arrests, Welfare and Whereabouts, and Related Services**	
11. Arrest and prison visits	No fee.
12. Assistance regarding the welfare and whereabouts of a U.S. citizen, including child custody inquiries and processing of repatriation and emergency dietary assistance loans.	No fee.
(Item no. 13 vacant)	
Death and Estate Services	
14. Assistance to next-of-kin:	
(a) After the death of a U.S. citizen abroad (providing assistance in disposition of remains, making arrangements for shipping remains, issuing Consular Mortuary Certificate, and providing up to 20 original Consular Reports of Death).	No fee.
(b) Making arrangements for a deceased non-U.S. citizen family member (providing assistance in shipping or other disposition of remains of a non-U.S. citizen) [11-Non U.S.C. Death].	Consular Time (Item 75) Plus Expenses.
15. Issuance of Consular Mortuary Certificate on behalf of a non-U.S. citizen [12-Non-U.S.C. Mort Cert]	60.
16. Acting as a provisional conservator of estates of U.S. citizens:	
(a) Taking possession of personal effects; making an inventory under an official seal (unless significant time and/or expenses incurred).	No fee.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(b) Overseeing the appraisal, sale, and final disposition of the estate, including disbursing funds, forwarding securities, etc. (unless significant time and/or expenses incurred).	No fee.
(c) For services listed in 16 (a) or (b) when significant time and/or expenses are incurred [13-Estate Costs]	Consular Time (Item 75) and/or Expenses.
(Items nos. 17 through 20 vacant)	
Nonimmigrant Visa Services	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21–MRV Processing]	100.
(b) Border crossing card—10 year (age 15 and over) [22–BCC 10 Year]	100.
(c) Border crossing card—5 year (under age 15). For Mexican citizen, if parent or guardian has or is applying for a border crossing card [23–BCC 5 Year].	13.
22. Exemptions from nonimmigrant visa application processing fee:	
(a) Applicants for A, G, C–3, NATO and diplomatic visas as defined in 22 CFR 41.26 [24–MRV Exempt]	No fee.
(b) Applicants for J visas participating in official U.S. Government-sponsored educational and cultural exchanges [24–MRV Exempt].	No fee.
(c) Replacement machine-readable visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant [24–MRV Exempt].	No fee.
(d) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families [24–MRV Exempt].	No fee.
(e) Applicants traveling to provide charitable services as determined by the Department [24–MRV Exempt]	No fee.
(f) U.S. Government employees traveling on official business [24–MRV Exempt]	No fee.
(g) A parent, sibling, spouse, or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. Government employee critically injured in the line of duty for visitation during emergency treatment and convalescence [24–MRV Exempt].	No fee.
23. Nonimmigrant visa issuance fee, including border-crossing cards [25–NIV Issuance Reciprocal]	Reciprocal.
24. Exemptions from nonimmigrant visa issuance fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under item 22(a); and their immediate families [26–NIV Issuance Exempt].	No fee.
(b) An applicant transiting to and from the United Nations Headquarters [26–NIV Issuance Exempt]	No fee.
(c) An applicant participating in a U.S. Government-sponsored program [26–NIV Issuance Exempt]	No fee.
(d) An applicant traveling to provide charitable services as determined by the Department [26–NIV Issuance Exempt].	No fee.
25. Fraud Prevention and Detection Fee for Visa applicant included in L blanket petition (principal applicant only) [27–NIV Adjudication, Blanket L].	500.
(Items nos. 26 through 30 vacant)	
Immigrant and Special Visa Services	
31. Filing immigrant visa petition (collected for the Bureau of U.S. Citizenship and Immigration Services):	
(a) Petition to classify status of alien relative for issuance of immigrant visa [81–USCIS I–130 Petition]	185.
(b) Petition to classify orphan as an immediate relative [82–USCIS I–600 Petition]	525.
32. Immigrant visa application processing fee (per person) [31–IV Application]	335.
33. Diversity Visa Lottery surcharge for lottery participation (per person applying for an immigrant visa as a result of the lottery program) [32–DV Processing].	375.
34. Affidavit of Support Review (only when AOS is reviewed domestically)	70.
35. Special visa services:	
(a) Determining Returning Resident Status [33-Returning Resident]	400.
(b) Transportation letter for Legal Permanent Residents of U.S. [34–LPR Transportation Letter]	165.
(c) Waiver of 2-year residency requirement [J Waiver]	215.
(d) Waiver of immigrant visa ineligibility (collected for the Bureau of U.S. Citizenship and Immigration Services) [83–IV Waiver].	250.
(e) Refugee or significant public benefit parole case processing [35-Refugee/Parole]	No fee.
(f) U.S. visa fingerprinting [36-Fingerprints]	85.
36. Immigrant visa security surcharge [37–IV Surcharge]	45.
(Items nos. 37 through 40 vacant)	
Documentary Services	
41. Providing notarial service:	
(a) First service (seal) [41-Notarial]	30.
(b) Each additional seal provided at the same time in connection with the same transaction [42-Additional Notarial]	20.
42. Certification of a true copy or that no record of an official file can be located (by a post abroad):	
(a) First copy [43-Certified Copy]	30.
(b) Each additional copy provided at the same time [44-Additional Copy]	20.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
43. Provision of documents, certified copies of documents, and other certifications by the Department of State (domestic):	
(a) Documents relating to births, marriages, and deaths of U.S. citizens abroad originally issued by a U.S. Embassy or Consulate.	30.
(b) Issuance of Replacement Report of Birth Abroad	30.
(c) Certified copies of documents relating to births and deaths within the former Canal Zone of Panama from records maintained by the Canal Zone Government from 1904 to September 30, 1979.	30.
(d) Certifying a copy of a document or extract from an official passport record	30.
(e) Certifying that no record of an official file can be located [45-Brth/Mar/Death/No Record]	30.
(f) Each additional copy provided at same time [46-Additional Cert]	20.
44. Authentications (by posts abroad):	
(a) Authenticating a foreign notary or other foreign official seal or signature	30.
(b) Authenticating a U.S. Federal, State, or territorial seal	30.
(c) Certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government.	30.
(d) Each authentication [47-Authentication]	30.
45. Exemptions: Notarial, certification, and authentication fees or passport file search fees will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant costs would be incurred) [48-Documents Exempt].	No fee.
(b) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining Federal, State, or municipal benefits [48-Documents Exempt].	No fee.
(c) For U.S. citizens outside the United States preparing ballots for any public election in the United States or any of its territories [48-Documents Exempt].	No fee.
(d) At the direct request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use [48-Documents Exempt].	No fee.
(e) At the direct request of a foreign government official when appropriate or as a reciprocal courtesy [48-Documents Exempt].	No fee.
(f) At the request of direct hire U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country [48-Documents Exempt].	No fee.
(g) With respect to documents whose production is ordered by a court of competent jurisdiction [48-Documents Exempt].	No fee.
(h) With respect to affidavits of support for immigrant visa applications [48-Documents Exempt]	No fee.
(i) With respect to endorsing U.S. Savings Bonds Certificates [48-Documents Exempt]	No fee.
(Items nos. 46 through 50 vacant)	
Judicial Assistance Services	
51. Processing letters rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases, including providing seal and certificate for return of letters rogatory executed by foreign officials:	
[51-Letters Rogatory]	735.
[52–FSIA]	735.
52. Taking depositions or executing commissions to take testimony:	
(a) Scheduling/arranging appointments for depositions, including depositions by video teleconference (per daily appointment) [53-Arrange Depo].	475.
(b) Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof) [54-Depose/Hourly].	265 Per Hour Plus Expenses.
(c) Swearing in witnesses for telephone depositions [55-Telephone Oath]	265.
(d) Supervising telephone depositions (per hour or part thereof over the first hour) [56-Supervise Tel Depo]	265 Per Hour Plus Expenses.
(e) Providing seal and certification of depositions [57-Deposition Cert]	70.
53. Exemptions: Deposition or executing commissions to take testimony. Fees will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred). [58-Judicial Exempt].	No fee.
(b) Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party [59-Indigent Test].	No fee.
(Items nos. 54 through 60 vacant)	
Services Relating to Vessels and Seamen	
61. Shipping and Seaman's services: Including but not limited to, recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of certificate of American ownership:	
[61-Shipping Bill of Sale]	Consular Time (Item 75) Plus Expenses.
[62-Shipping Consular Radio LISC]	Time (Item 75) Plus Expenses.
[63-Shipping Cert AM Own]	Consular Time (Item 75) Plus Expenses.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
[64-Shipping Misc]	Consular Time (Item 75) Plus Expenses.
(Items nos. 62 through 70 vacant)	
Administrative Services	
71. Non-emergency telephone calls [70-Toll Call Cost] [71-Toll Cost Surcharge]	Long Distance Charge Plus $10.
72. Setting up and maintaining a trust account: For one year or less to transfer funds to or for the benefit of a U.S. citizen in need in a foreign country [72–OCS Trust].	30.
73. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary [73-Transportation].	Expenses Incurred.
74. Return check processing fee [74-Return Check]	25.
75. Consular time charges: As required by this schedule and for fee services performed away from the office or during after-duty hours (per hour or part thereof/per consular employee) [75-Consular Time].	265.
76. Photocopies (per page) [76-Photocopy]	1.
(Items nos. 77 through 80 vacant)	

Dated: January 14, 2005.

Grant S. Green,

Under Secretary for Management, Department of State.

[FR Doc. 05–1930 Filed 2–1–05; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0005; FRL–7867–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Missouri. This approval pertains to revisions to the State's rule which add vapor line requirements necessary to achieve Stage I vapor recovery for air quality benefits. The effect of this approval is to ensure Federal enforceability of the State air program rules and to maintain consistency between the State-adopted rules and the approved SIP.

DATES: This direct final rule will be effective April 4, 2005, without further notice, unless EPA receives adverse comment by March 4, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0005, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search;'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *algoe-eakin.amy@epa.gov.*
4. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
5. Hand Delivery or Courier. Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–MO–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On May 11, 2004, we received a request from the Missouri Department of Natural Resources to approve as an amendment to the Missouri SIP revisions to rule 10 CSR 10–2.260, Control of Petroleum Liquid Storage, Loading, and Transfer. This rule applies to Clay, Jackson, and Platte counties in the State of Missouri.

This SIP revision restricts volatile organic compound emissions from the handling of petroleum liquids, which contribute to the formation of ozone. By adding vapor line requirements, this revision will require owners or operators of gasoline delivery vessels to employ one vapor line per product line when transferring gasoline to a storage tank of a capacity greater than 2000 gallons. The intent of adding necessary vapor line requirements is to ensure the recovery of greater than ninety percent of gasoline vapors generated during a gasoline transfer, thus protecting the environment and health of the Kansas City area.

In addition to clarifying the vapor line requirements, this SIP revision corrects the definition of Stage I vapor recovery to include the transferring of gasoline from a loading installation to a delivery vessel or truck; provides flexibility to applicable sources to obtain approval of alternative test methods for specific cases at the discretion of the staff director; and restructures the rule for administrative consistency with other Missouri rules.

With regard to the rule change allowing staff director approval for alternative test methods, a supplement to the submittal states that Missouri advocates strict adherence to Federal test methods. If a request were received by MDNR, the State would seek EPA approval of the alternative test methods. Under a similar rule in St. Louis, the State has never received a request for an alternative test method.

Acceptance criteria for an alternative test method would include justification that an alternative test method was equal to or more stringent than the specified test method. In addition, sources subject to this rule would also likely be subject to Federal New Source Performance Standards or standards for Hazardous Air Pollutants. Under the Missouri rules incorporating the Federal standards, alternative test methods must be at least as stringent as those in the Federal standard and would be subject to the approval process, including EPA approval, established for the Federal standards.

Have the Requirements for Approval of a SIP Revision Been Met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP state rule 10 CSR 10–2.260, which became effective on April 30, 2004.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 18, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table for chapter 2 is amended by revising the entry for 10–2.260 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
* * *	*	*	*	*
10–2.260	Control of Petroleum Liquid Storage, Loading, and Transfer..	04/30/04	02/02/05 [insert FR page number where the document begins].	
* * *	*	*	*	*

* * * * *

[FR Doc. 05–1993 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–147, MB Docket No. 00–163, RM–9934]

Digital Television Broadcast Service; Thief River Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Red River Broadcast Company, LLC, substitutes DTV channel 32 for DTV channel 57. *See* 65 FR 54832, September 11, 2000. DTV channel 32 can be allotted to Thief River Falls, Minnesota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 48–01–19 N. and 96–22–12 W. with a power of 1000, HAAT of 183 meters and with a DTV service population of 142 thousand. Since the community Thief River 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 March 14, 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. 00–163, adopted January 21, 2005, and released January 28, 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 Minnesota, is amended by removing DTV channel 57 and adding DTV channel 32 at Thief River Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–1936 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–125, MB Docket No. 04–185, RM–10860]

Digital Television Broadcast Service; Appleton, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ace TV, Inc., substitutes DTV channel 27c for DTV channel 59 at Appleton. *See* 69 FR 30855, June 1, 2004. DTV channel 27c can be allotted to Appleton, Wisconsin, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 44–21–30 N. and 87–58–48 W. with a power of 50, HAAT of 336 meters and with a DTV service population of 835 thousand. Since the community Appleton 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 March 14, 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. 04–185, adopted January 14, 2005, and released January 28, 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 Wisconsin, is amended by removing DTV channel 59 and adding DTV channel 27c at Appleton.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 05–1935 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–30; MM Docket No. 00–245; RM–9971, RM–10185, RM–10186]

Radio Broadcasting Services; Alberta and Dinwiddie, VA, Garysburg and Whitakers, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; Denial of Petition for Reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Dinwiddie Radio Company and a Petition for Reconsideration and Clarification filed by MainQuad Broadcasting, Inc. both directed to the *Report and Order* in this proceeding. *See* 67 FR 39864, June 11, 2002. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 00–245 adopted January 5, 2005, and released January 10, 2005. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–1357 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 70, No. 21

Wednesday, February 2, 2005

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1700 and 1709

RIN 0572–AB91

Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing regulations implementing its financial assistance programs for rural communities with extremely high energy costs. These programs are authorized under section 19 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 918a). This proposed rule is intended to establish and clarify eligibility and application requirements, the review and approval process, and grant administration procedures for RUS grants to rural communities with extremely high energy costs and for grants to State entities for bulk fuel revolving loan funds. This publication of these rules will assure timely and effective distribution of grant funds to eligible rural communities and state entities. In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, RUS will publish a timely notice withdrawing the direct final rule based on this action. Any parties interested in commenting on this proposed action should do so at this time.

DATES: Comments on this proposed action must be received on or before March 4, 2005.

ADDRESSES: Submit your adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instruction for submitting comments.
- Agency Web site: *http://www.usda.;gov/rus/index2.Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''7 CFR 1700 and 1709.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: RUS requests a signed original and three copies of all written comments (7 CFR 1700.4). Comments may also be submitted by e-mail at *RUSComments@usda.gov* and must contain the phrase ''High Cost Energy Grants'' in the subject line. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without changes to *http://www.usda.gov. rus.index2.Comments.htm*, including any personal information provided. All comments will also be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Ave., SW., Stop 1560, Room 5165–S, Washington, DC 20250–1560. Telephone (202) 720–9545, Fax (202) 690–0717, e-mail address: *Karen.Larsen@usda.gov.*

SUPPLEMENTARY INFORMATION: *See* the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: January 13, 2005.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 05–1879 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 109 and 300

[Notice 2005–3]

Definition of ''Agent'' for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on the proposed revision of the definition of ''agent'' for its regulations on coordinated and independent expenditures, and non-Federal funds, which are commonly referred to as ''soft money.'' Current Commission regulations define agent as ''any person who has actual authority, either express or implied'' to perform certain actions. This definition does not include persons acting only with apparent authority. The Commission's regulations defining agent were challenged in *Shays* v. *FEC.* The District Court held that the Commission's definitions of agent did not necessarily run contrary to Congress's intent and were based on a permissible construction of the statute. However, the court also held that the Commission had not provided adequate explanation of its decision to exclude from the definition of agent persons acting only with apparent authority and therefore had not satisfied the reasoned analysis requirement of the Administrative Procedures Act. The court remanded the regulations to the Commission for further action consistent with the court's opinion. Accordingly, in order to comply with the court's decision, the Commission now revisits the definition of agent by issuing this Notice of Proposed Rulemaking. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before March 4, 2005. If the

Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *agentnprm@fec.gov* and may also be submitted through the Federal eRegulations Portal at *http://www.regulations.gov.* All electronic comments must include the full name, electronic mail address, and postal service address of the commenter. Electronic comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. If the Commission decides that a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Ron B. Katwan, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (March 27, 2002) (''BCRA''), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act''). On July 29, 2002, the Commission promulgated regulations in order to implement BCRA's new limitations on party, candidate, and officeholder solicitation and use of non-Federal funds. *Final Rules and Explanation and Justification for Regulations on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,* 67 FR 49064 (July 29, 2002) (''Soft Money E&J''). On January 3, 2003, the Commission promulgated regulations implementing BCRA's provisions regarding payments by political committees and other persons for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee and regarding expenditures by political party committees that are made either in coordination with, or independently from, candidates. *Final Rules and Explanation and Justification for Regulations on Coordinated and Independent Expenditures,* 68 FR 421 (Jan. 3, 2003) (''Coordination E&J'').

Many of the regulations promulgated in these two rulemakings apply not only to principals, such as a candidate or party committee, but also to their agents. 67 FR at 49081–82; 68 FR at 421–22. Accordingly, in each rulemaking the Commission adopted a definition of the term ''agent.'' 67 FR at 49081–83; 68 FR at 423–25. The two identical definitions provide that an agent is ''any person who has actual authority, either express or implied'' to perform certain actions. *See* 11 CFR 109.3 and 300.2(b). The definitions do not include persons acting only with apparent authority.

Subsequently, in *Shays* v. *FEC,* 337 F.Supp.2d 28 (D.D.C. 2004), *appeal filed,* No. 04–5352 (D.C. Cir. Sept. 28, 2004) (''*Shays*''), the district court held that the Commission had not satisfied the reasoned analysis requirement of the Administrative Procedures Act (''APA'') because the Commission had not provided adequate explanation of its decision to exclude from the definition of agent persons acting only with apparent authority.[1] The court based its conclusion that the Explanations and Justifications for the Commission's definitions of agent did not satisfy APA requirements on three grounds. First, the court found that the Commission had not explained why its former definition of agent, which pre-dated BCRA and which had included a definition that covered certain aspects of apparent authority, should be changed. *Shays* at 87. Second, the court found that the Commission had not addressed the impact that its construction of the term agent might have on preventing circumvention of the Act's limitations and prohibitions and preventing the appearance of corruption, two policies that Congress sought to advance in passing BCRA. *Id.* at 72, 87. Third, the court found that the Commission's main concern in excluding apparent authority from the definitions—namely to prevent a candidate or party committee from being held liable for the actions of a rogue or misguided volunteer who purports to act on behalf of the candidate or committee—was ''not supported by the law of agency. * * *'' *Id.* at 87.

The court remanded both definitions to the Commission for further action consistent with its opinion. *Id.* at 130. Accordingly, in order to comply with the court's decision in *Shays,* the Commission is now issuing this Notice of Proposed Rulemaking (''NPRM'') on the definition of agent. For reasons explained in more detail below, the Commission proposes to revise its regulations to include persons acting with apparent authority in its definitions of agent at 11 CFR 109.3 and 300.2(b). The Commission may nonetheless determine after the comment period to retain the current definitions of agent, which exclude apparent authority. Accordingly, this NPRM seeks comment both on whether apparent authority should be added to the Commission's definitions of agent and on whether there are reasons for continuing to exclude apparent authority from the definitions.

Proposed 11 CFR 109.3 and 300.2(b)—Definitions

According to the common law definition of actual and apparent authority as codified in the Restatement (Second) of Agency (1958) (''Restatement''),[2] an agent's actual authority is created by manifestations of consent (express or implied) made by the principal *to the agent.* Restatement, § 7. Apparent authority, by contrast, is the result of manifestations the principal makes *to a third party* about a person's authority to act on the principal's behalf. Restatement, § 8. It is important to emphasize that apparent authority is created only where the principal's word or conduct ''reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.'' *Overnite Transp. Co.* v. *NLRB*, 140 F.3d 259, 266 (D.C. Cir. 1998) (quoting

[1] Although the court held that, with respect to the definition of agent, the Soft Money E&J and the Coordination E&J both failed to satisfy APA requirements, it found that the definitions of agent at 11 CFR 109.3 and 300.2(b) did not necessarily run contrary to Congress's intent and were based on a permissible construction of the statute. *Id.* at 71–72, 81–86 (finding that both definitions ''survive[] *Chevron* review''). The court concluded that ''the FEC's definition of the term 'agent' is, at least on its face, a 'permissible construction of the statute' '' and that ''the Commission's construction of the term 'agent' is faithful to the literal terms of the statute.'' *Id.* at 84.

[2] *See Kolstad* v. *American Dental Ass'n*, 527 U.S. 526, 542 (1999) (''The common law as codified in the Restatement (Second) of Agency (1957), provides a useful starting point for defining [the] general common law [of agency].'')

Restatement, § 27). Moreover, to have apparent authority ''the third party must not only believe that the individual acts on behalf of the principal but, in addition, 'either the *principal* must intend to cause the third party to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.' '' *Id.* (quoting Restatement, § 27, cmt. a) (emphasis added). Finally, ''apparent authority can be created by appointing a person to a position, such as that of manager or treasurer, that carries with it generally recognized duties; to those who know of the appointment there is apparent authority to do the things ordinarily entrusted to one occupying such a position, regardless of unknown limitations which are imposed upon the particular agent.'' Restatement, § 27, cmt. a.

At the time the Commission decided to exclude apparent authority from its definitions of agent, its primary goal was to ensure that a principal would be able to control whether a would-be agent had authority to act on the principal's behalf. Accordingly, the Commission sought to limit a principal's liability for the actions of an agent to situations where the principal had engaged in specific conduct to create an agent's authority. Particularly, the Commission was concerned that by including apparent authority in the definition of agent it would, first, expose principals to liability based solely on the actions of a rogue or misguided volunteer and, second, ''place the definition of 'agent' in the hands of a third party''. *See Soft Money E&J*, 67 FR at 49083; *Coordination E&J*, 68 FR at 425. The Commission seeks comment on rationales for excluding apparent authority from the definition of agent.

According to the *Shays* court, the scope of the common law concept of apparent authority appears to exclude from the definition of agent precisely the types of conduct that the Commission sought to exclude when it decided to limit its definitions of agent to persons acting with actual authority. Just as the Commission intended when it adopted its current definitions of agent, the common law definition of agent, including apparent authority, limits a principal's liability for a would-be agent's actions to situations where the principal has taken specific action to create authority, either actual or apparent, in a person.

Given the *Shays* court's interpretation of the narrow scope of apparent authority, the Commission now proposes to revise 11 CFR 109.3 and 300.2(b) by defining agent as any person acting with either actual authority, express or implied, or apparent authority, but also seeks comments on whether or not there remain reasons to exclude apparent authority from the Commission's definitions of agent.

By including persons acting with apparent authority in the definition of agent, the proposed revision would ensure that when a candidate or party committee conveys through words or actions that another person has authority to act on that candidate's or committee's behalf, then the actions of that person are imputed to the candidate or party committee for purposes of determining liability under the Commission's soft money and coordination provisions. The Commission solicits comments on whether persons acting with apparent authority should be included in the definitions of agent at 11 CFR 109.3 and 300.2(b). Is the proposed revision required by BCRA? Would the proposed revision reduce the opportunities for circumvention of the Act and the appearance of corruption? Furthermore, would including apparent authority in the definition of agent affect the exercise of political activity, and if so, how? Would including apparent authority in the definition of agent make it more difficult for a campaign or party organization to predict potential liability?

The Commission also seeks comment on whether it should specify the appropriate conclusions to be drawn from a principal's silence. Should a principal be held liable for the actions of another person based solely on the principal's failure to disavow that person's actions, or must there be some other facts present to indicate knowledge and/or complicity? Should the Commission's rules provide that the failure of a person to disavow the actions of another person shall not, without more, create apparent authority for purposes of the Act?

Alternatively, the Commission solicits comment on whether, instead of including apparent authority, it would be more consistent with the purposes of BCRA to continue to exclude persons acting only with apparent authority from the definitions of agent. The Supreme Court has noted that not every nuance of the law of agency need be incorporated into Federal statutes where full incorporation is not necessary to effect the statute's underlying purpose. *See, e.g., Farragher* v. *City of Boca Raton*, 527 U.S. 775, 802 n. 3 (1998) (The ''obligation here is not to make a pronouncement of agency law in general or to transplant [the Restatement (Second) of Agency into a Federal Statute, but] is to adapt agency concepts to the [Statute's] practical objectives.'') However, would excluding apparent authority from the definitions of agent create opportunities for circumvention of the Act or permit activity that would give the appearance of corruption?

In the Soft Money E&J, the Commission reasoned that the exclusion of apparent authority from the definition of agent was appropriate because apparent authority was primarily designed to ''protect innocent third parties who had suffered monetary damages as a result of reasonably relying on representations by individuals who purported to have, but did not actually have, authority to act on behalf of principals. Unlike other statutes, such as consumer protection or anti-fraud legislation, BCRA does not affect individuals who have been defrauded or have suffered economic loss due to detrimental reliance on unauthorized representations.'' 67 FR at 49082. The Commission solicits comments on whether there are reasons supporting this rationale for excluding apparent authority from the definition of agent. Specifically, do the legislative purposes of BCRA of preventing circumvention of the Act and the appearance of corruption differ from those of other statutes, such as anti-fraud, consumer protection, or antitrust, in ways that support excluding apparent authority from the definition of agent?

Particularly, the Commission notes the following differences between ordinary commercial settings, which are the settings in which the concept of apparent authority has been applied, and political settings, in which the Commission's regulations operate: (1) Ordinarily, in commercial settings people have no incentive to promote a product with which they are not associated; (2) in commercial settings, those who have not suffered harm generally have no incentive or standing to file complaints, whereas in political settings opposing candidates may be motivated to impede their rivals' campaigns by filing complaints; (3) in commercial settings, businesses usually have incentives to dissuade people from purporting to act on their behalf, whereas in political settings a candidate's or party's goal is often to motivate others to act on their behalf; and finally (4) in political settings, constitutional rights are at stake that are not often at stake in commercial settings. Do these differences between commercial and political settings provide grounds for excluding apparent authority from the Commission's definitions of agent? Are there additional reasons for excluding apparent authority from the definition of agent?

Alternatively, rather than either excluding apparent authority altogether from the definitions of agent at 11 CFR 109.3 and 300.2(b) or simply adding the term ''apparent authority'' to these definitions, should the Commission instead provide a more narrowly tailored definition of agent? Before the Commission adopted the definition of agent in the soft money regulations in 2002, the Commission's former regulations contained a narrowly tailored definition of agent that included certain aspects of apparent authority. Specifically, former 11 CFR 109.1(b)(5) defined agent as including ''any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.'' Former 11 CFR 109.1(b)(5) appears to be narrower than the revision proposed in this NPRM because it does not include cases where apparent authority exists for persons other than those who hold a position ''where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.'' Under the proposed revision of the definitions of agent, which would add the term ''apparent authority'' and rely on the Restatement for the definition of the term, a principal potentially could invest a person with the authority of an agent also by making statements to, or engaging in conduct with respect to, a third party, regardless of the position the putative agent occupies within the principal's organization. Should the Commission re-adopt the definition of agent at former 11 CFR 109.1(b)(5)? Or would that definition be either too narrow or too broad to effectuate the purposes of BCRA's soft money and independent and coordinated expenditures provisions? Would former 11 CFR 109.1(b)(5) be more or less effective than the proposed revision in preventing circumvention of the Act and the appearance of corruption?

Alternatively, the Commission seeks comments on whether it should adopt an entirely new approach towards apparent authority, different from both the definition at former 11 CFR 109.1(b)(5) and the Restatement. Commenters who propose such a new approach should explain how their proposal would be more effective than both the revision proposed in this NPRM and former 11 CFR 109.1(b)(5) in implementing the purposes of BCRA's soft money and independent and coordinated expenditures provisions, and how a wholly new approach would prevent circumvention of the Act and the appearance of corruption.

Finally, although the Commission proposes to have consistent definitions in both 11 CFR 109.3 and 300.2(b), the Commission also solicits comments on whether effective implementation of BCRA's purposes would be better served by defining agent in the soft money context differently from agent in the coordination context and, specifically, whether apparent authority should be included in one but not in the other definition.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities. To the extent that any political party committees or other political committees may fall within the definition of ''small entities,'' their number is not substantial.

List of Subjects

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A and C of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) AND (d), AND PUB. L. 107–55 SEC. 214(c))

1. The authority citation for part 109 would continue to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d,; Sec. 214(c) of Pub. L. 107–55, 116 Stat. 81.

2. Section 109.3 would be amended by revising the introductory text of the section to read as follows:

§ 109.3 Definitions.

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, or apparent authority to engage in any of the following activities on behalf of the specified persons:

* * * * *

PART 300—NON-FEDERAL FUNDS

3. The authority citation for part 300 would continue to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

4. Section 300.2 would be amended by revising the introductory text of paragraph (b) to read as follows:

§ 300.2 Definitions.

* * * * *

(b) *Agent.* For the purposes of part 300 of chapter I, agent means any person who has actual authority, either express or implied, or apparent authority to engage in any of the following activities on behalf of the specified persons:

* * * * *

Dated: January 27, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–1892 Filed 2–1–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–2]

De Minimis Exemption for Disbursement of Levin Funds by State, District, and Local Party Committees

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to the Commission's regulations that establish a *de minimis* exemption allowing State, district, and local committees of a political party to pay for certain Federal election activity aggregating $5,000 or less in a calendar year entirely with Levin funds. In *Shays* v. *FEC,* the District Court held that the Commission's *de minimis* exemption was inconsistent with the statutory intent of the Bipartisan Campaign Reform Act and remanded the regulation to the Commission for further action consistent with the court's opinion. The Commission is appealing

this ruling to the D.C. Circuit. In the interim, the Commission is initiating this rulemaking. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before March 4, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *deminimis@fec.gov* and may also be submitted through the Federal eRegulations Portal at *http://www.regulations.gov.* All electronic comments must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (the ''Act''), 2 U.S.C. 431 *et seq.* As amended by BCRA, subsection 441i(b)(1) of the Act, 2 U.S.C. 441i(b)(1), provides that State, district, and local political party committees must generally use Federal funds [1] to pay for Federal election activity (''FEA'').[2] However, subsection 441i(b)(2) provides an exception for certain activities covered by Types 1 and 2 FEA, for which State, district, and local political party committees may allocate disbursements between Federal funds and Levin funds in accordance with allocation ratios as determined by the Commission.[3] 2 U.S.C. 441i(b)(2); *see also* 11 CFR 300.2(i), 300.32, and 300.33.

On July 29, 2002, the Commission promulgated regulations at 11 CFR Part 300 implementing BCRA's provisions concerning disbursements by State, district, and local party committees for FEA. *See Final Rules and Explanation and Justification for Regulations on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,* 67 FR 49064 (July 29, 2002) (''Soft Money E&J''). The regulations at 11 CFR 300.32(c)(4) require any State, district, or local committee of a political party that disburses more than $5,000 on allocable Type 1&2 FEA in a calendar year either to pay for such allocable FEA entirely with Federal funds or to allocate disbursements between Federal funds and Levin funds. The Commission also created a *de minimis* exemption for any State, district, or local party committee whose disbursements for allocable Type 1&2 FEA aggregate $5,000 or less in a calendar year (the ''$5,000 Exemption''), permitting such committees to pay for these types of FEA entirely with Levin funds.

In the Soft Money E&J, the Commission stated three reasons for promulgating the $5,000 Exemption at 11 CFR 300.32(c)(4). First, the Commission noted that although BCRA requires State, district, and local political party committees to report all receipts and disbursements for FEA, the statute provides an exception for committees whose FEA receipts and disbursements aggregate less than $5,000 in a calendar year. *See* 2 U.S.C. 434(e)(2)(A). The Commission reasoned that the reporting exception suggests that Congress did not take a rigid approach to low levels of FEA. Second, the Commission explained that it was particularly sensitive to the grassroots nature of allocable Type 1&2 FEA, stating that there is a far weaker nexus between Federal candidates and this category of FEA than the other types of FEA for which use of Levin funds is prohibited. Finally, the Commission noted that $5,000 is only half of what any single donor may donate to each and every State, district, and local political party committee under BCRA, so there is no danger that allowing a committee to use entirely Levin funds for allocable Type 1&2 FEA aggregating $5,000 or less in a calendar year would lead to circumvention of the $10,000 Levin fund donation limit in BCRA. *See* Soft Money E&J at 49097.

In *Shays* v. *FEC,* 337 F.Supp.2d 28, 114–117 (D.D.C. 2004), *appeal filed,* No. 04–5352 (D.C. Cir. Sept. 28, 2004) (''*Shays*''), the district court held that the $5,000 Exemption in 11 CFR 300.32(c)(4) was inconsistent with Congress's clear intent, as expressed in BCRA, to allow State, district, and local party committees to pay for allocable Type 1&2 FEA either solely with Federal funds or with funds allocated between Federal and Levin funds.[4] The court concluded that the $5,000 Exemption was not permissible, finding that ''Congress clearly expressed its intent in BCRA's statutory language that all [FEA] pursued by state, local and district political party committees is to be paid for using federal funds, except for certain circumstances where such committees may use an 'allocated' ratio

[1] ''Federal funds'' are funds that comply with the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

[2] The four types of FEA are: Type 1—Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2—Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3—A public communication that refers to a clearly identified candidate for Federal office; and Type 4—Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of his or her compensated time during that month on activities in connection with a Federal election. *See* 2 U.S.C. 431(20) and 11 CFR 100.24.

[3] Levin funds are a type of non-Federal funds raised only by State, district, and local political party committees. Levin funds are limited to donations of $10,000 per source per calendar year and are generally solicitable from sources otherwise prohibited by the Act (except from foreign nationals). Donations of Levin Funds, however, must be lawful under the laws of the State in which a committee is organized. *See* 2 U.S.C. 441i(b)(2)(B); *see also* 11 CFR 300.31 and 300.32(c). Types 1 and 2 FEA listed in note 2, above, are allocable between Federal and Levin funds, so long as the activities do not refer to a clearly identified Federal candidate (''allocable Type 1&2 FEA''). *See* 2 U.S.C. 441i(b)(2)(B)(i) and 11 CFR 300.32.

[4] ''Under the *Chevron* analysis, a court first asks ''whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'''' *Shays* at 51 (quoting *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council,* 467 U.S. 837, 842–43 (1984)).

of federal and Levin funds.'' *Shays* at 116–17.

The court stated that for a regulatory *de minimis* exemption to stand, an agency has the burden of demonstrating that following the precise language of the statute would lead to ''absurd or futile results,'' or that the failure to create a *de minimis* exemption would be ''contrary to the primary legislative goal.'' *Shays* at 117 (quoting *Environmental Defense Fund* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996) quoting, in turn, *State of Ohio* v. *EPA,* 997 F.2d 1520, 1535 (D.C. Cir. 1993)). The court addressed each of the Commission's reasons for adopting the $5,000 Exemption and found that the Commission had not met the burden of demonstrating that following the precise statutory language would lead to absurd or futile results and had not shown that the $5,000 Exemption comported with BCRA's purposes.[5] *Shays* at 117. The court then remanded the regulations to the Commission for further action consistent with its opinion. *Shays* at 130.

I. Proposed 11 CFR 300.32(c)(4)—Conditions and Restrictions on Spending Levin Funds

Because the court found the $5,000 Exemption to be inconsistent with the statutory intent of 2 U.S.C 441i(b) and that the standards for upholding a *de minimis* exemption had not been met, the Commission proposes to delete the $5,000 Exemption from 11 CFR 300.32(c)(4). Paragraph (c)(4) of the proposed rule would require State, local, and district political party committees to pay for *all* allocable FEA either entirely with Federal funds or with an allocation of Federal and Levin funds pursuant to 11 CFR 300.33. The Commission solicits comments on the proposed regulation. The Commission also invites comments on whether following the precise language of BCRA would lead to ''absurd or futile results,'' absent promulgation of a *de minimis* exemption for disbursement of Levin funds by State, district, and local political party committees.

II. Alternative Proposal for 11 CFR 300.32(c)(4)

Although not reflected in the attached proposed rules, the Commission also seeks comments on whether 11 CFR 300.32(c)(4) should be revised to apply only to State, district, and local party committees with combined receipts *and* disbursements for FEA (whether allocable or not) that together aggregate to less than $5,000 in a calendar year. *See* 2 U.S.C. 434(e)(2)(A). If a *de minimis* exemption allowing for the exclusive use of Levin funds for allocable Type 1&2 FEA were to apply only to State, district, and local party committees with FEA receipts *and* disbursements aggregating less than $5,000 in a calendar year, the exemption would then apply only to those committees that are already statutorily exempt from having to report FEA under the exception contained in 2 U.S.C. 434(e)(2)(A). The Commission invites comment on whether adoption of this alternative proposal would comport with the statutory intent of 2 U.S.C 441i(b).

[5] The Commission has filed an appeal with the U.S. Court of Appeals for the D.C. Circuit of certain aspects of the *Shays* decision, including the court's conclusion that the $5,000 Exemption is inconsistent with the statutory intent of 2 U.S.C 441i(b). The appeal is currently pending. In the event the Commission prevails on appeal, the Commission may terminate this rulemaking proceeding prior to adoption of final rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the State, district, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. To the extent that other political party committees may fall within the definition of ''small entities,'' their number is not substantial.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter C of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

1. The authority citation for part 300 would continue to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.32 would be amended by revising paragraph (c)(4) to read as follows:

§ 300.32 Expenditures and disbursements

* * * * *

(c) * * *

(4) The disbursements for allocable Federal election activity may be paid for entirely with Federal funds or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

* * * * *

Dated: January 27, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–1891 Filed 2–1–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This proposed AD would require inspecting to detect damage of certain wiring in the flight compartment, performing corrective actions if necessary, modifying certain wiring connections, and revising the airplane flight manual. This proposed AD is prompted by reports of miswiring in the power distribution system. We are proposing this AD to ensure that the flightcrew is aware of the source of battery power for certain equipment, and to prevent damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

DATES: We must receive comments on this proposed AD by March 21, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20251; the directorate identifier for this docket is 2004–NM–164–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that miswiring in the flight compartment has been found on Raytheon Model Hawker 800XP airplanes. In one case, this miswiring affects the radio emergency switch, which is intended to ensure that the flightcrew is able to use navigation and communication radios when the airplane batteries are depleted during an electrical emergency. However, activating the radio emergency switch under normal aircraft operating conditions links the 35-amp essential radio bus and the radio emergency bus, which results in several wires being connected to the 35-amp essential radio bus without protection by circuit breakers or fuses. If one of these wires were to short to ground or be exposed to excessive current flow, wires, connectors, relays, or surrounding circuits or equipment may be damaged. Operating the radio emergency switch in accordance with the Emergency Procedures section of the airplane flight manual (AFM) will not cause the condition. In another case, miswiring has resulted in battery no. 3 supplying power to equipment that the Emergency Procedures section of the AFM identifies as being supplied by battery no. 4 and vice versa. These conditions, if not corrected, could cause the flightcrew to be misled about the source of battery power for certain equipment, or could lead to damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

Relevant Service Information

We have reviewed Raytheon Service Bulletin 24–3555, Revision 1, dated June 2004. Part 1 of the service bulletin describes procedures for visually inspecting for damage (primarily, but not limited to, evidence of heat damage) of wiring in the flight compartment. If any damage is found, corrective actions include performing repairs, or replacing damaged wiring with new wiring and replacing, with new parts, any relays or connectors from which damaged wiring extends. Part 2 of the service bulletin describes procedures for modifying certain wiring connections in the flight compartment, which includes replacing a certain circuitbreaker switch with an improved part, installing new busbars, and replacing a certain circuitbreaker with an improved part.

The service bulletin also specifies revising the Emergency Procedures section of the AFM to include a certain temporary change. We have reviewed Raytheon Hawker 800XP Temporary Change 140–590032–0005TC7, dated June 3, 2003, which is intended to inform the flightcrew which standby batteries provide power to what equipment once the actions in Raytheon Service Bulletin 24–3555, Revision 1, have been done.

Accomplishing the actions specified in Raytheon Service Bulletin 24–3555, Revision 1, is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Inspection Type

Raytheon Service Bulletin 24–3555, Revision 1, specifies visually inspecting for damage of certain wiring in the flight compartment. We find that the procedures described in the service bulletin constitute a detailed inspection. Note 1 of this proposed AD defines what we mean by ''detailed inspection.''

Differences Between the Proposed AD and Service Information

Where Raytheon Service Bulletin 24–3555, Revision 1, specifies contacting the manufacturer for information on certain actions, this proposed AD requires that, before further flight, you must contact the FAA. Then, before further flight, any applicable action specified by the FAA must be accomplished in accordance with a method approved by the FAA.

Raytheon Service Bulletin 24–3555, Revision 1, specifies that, on certain airplanes equipped with Airshow Cabin Display, the actions in Raytheon Service Bulletin 24–3664 must be done concurrently with or subsequent to the actions in Part 2 of Raytheon Service Bulletin 24–3555, Revision 1. We have determined that it is not necessary for this proposed AD to require accomplishing Raytheon Service

Bulletin 24–3664. It is possible to do all of the applicable actions in Raytheon Service Bulletin 24–3555, Revision 1, without first doing the actions in Raytheon Service Bulletin 24–3664.

Although the Accomplishment Instructions of Raytheon Service Bulletin 24–3555, Revision 1, describe procedures for reporting compliance with the service bulletin, this proposed AD would not require that action.

Costs of Compliance

There are about 45 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	18	$65	None	$1,170	30	$35,100
Modification	6	65	$435	825	30	24,750

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model Hawker 800XP airplanes, certificated in any category, serial numbers 258541, 258556, and 258567 through 258608 inclusive.

Unsafe Condition

(d) This AD was prompted by reports of miswiring in the power distribution system. We are issuing this AD to ensure that the flightcrew is aware of the source of battery power for certain equipment, and to prevent damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

Compliance

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

Service Information Reference

(f) The term ''service bulletin,'' as used in this AD, means Raytheon Service Bulletin 24–3555, Revision 1, dated June 2004.

(1) Where the service bulletin specifies contacting the manufacturer for information, this proposed AD requires, before further flight, contacting the Manager, Wichita Aircraft Certification Office (ACO), FAA. Then, before further flight, any applicable action specified by the Manager, Wichita ACO, must be accomplished in accordance with a method approved by the Manager, Wichita ACO.

(2) The service bulletin also refers to Raytheon Hawker 800XP Temporary Change 140–590032–0005TC7, dated June 3, 2003, which is intended to be inserted into the Emergency Procedures section of the airplane flight manual to inform the flightcrew which standby batteries provide power to what equipment once the actions in the service bulletin have been done.

(3) Where the service bulletin specifies to report compliance information to the manufacturer, this AD does not include that requirement.

Inspection

(g) Within 50 flight hours or 30 days after the effective date of this AD, whichever is first: Perform a detailed inspection for damage (primarily but not limited to evidence of heat damage) of wiring in the flight compartment, and all applicable corrective actions, by doing all actions in part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (f)(1) and (f)(3) of this AD. Any applicable corrective action must be done before further flight.

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

Modification

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, modify wiring in the flight compartment by doing all actions in accordance with part 2 of the Accomplishment Instructions of the service bulletin. Following accomplishment of the actions in part 2 of the service bulletin, before further flight, do all actions associated with the functional test, including revising the Emergency Procedures section of the Raytheon Hawker 800XP Airplane Flight Manual to include the information in Temporary Change Part Number 140–590032–0005TC7, in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no damage was found during the inspection required by paragraph (g) of this AD: Do paragraph (h) within 300 flight hours or 180 days after the effective date of this AD, whichever is first.

(2) If any damage is found during the inspection required by paragraph (g) of this AD: Do paragraph (h) before further flight after the damage is found.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on January 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1925 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Rolls Royce plc (RR) RB211–524 series turbofan engines with certain part number (P/N) intermediate pressure (IP) compressor stage 5 disks installed. That proposal required new reduced IP compressor stage 5 disk cyclic limits. That proposal also required removing from service affected disks that already exceed the new reduced cyclic limit, and removing other affected disks before exceeding their cyclic limits, using a drawdown schedule. That proposal resulted from the discovery of cracks in the cooling air hole areas of the disk front spacer arm. This Supplemental Notice of Proposed Rulemaking (SNPRM) revises the proposed rule by correcting certain cycle life limits specified in Table 3 of that AD and by clarifying certain inspections. We are proposing this AD to prevent IP compressor stage 5 disk failure, which could result in uncontained engine failure and possible damage to the airplane.

DATES: Comments must be received by April 4, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, PO Box 31 Derby, DE248BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2002–NE–40–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On October 21, 2003 we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD to apply to RR RB211–524 series turbofan engines, with certain P/N IP compressor stage 5 disks installed. The Office of the Federal Register published that proposal as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 27, 2003 (68 FR 61158). That NPRM would have required new reduced IP compressor stage 5 disk cyclic limits. The NPRM also required removing from service affected disks that already exceed the new reduced cyclic limit, and removing other affected disks before exceeding their cyclic limits, using a drawdown schedule. That NPRM resulted from the discovery of cracks in the cooling air hole areas of the disk front spacer arm. That condition, if not corrected, could result in IP compressor stage 5 disk failure, which could result in uncontained engine failure and possible damage to the airplane.

Since we issued that NPRM, we found an error in Table 3 at the date December 1, 2008 row. The cycle life limits in columns 4 and 5 of this row were written incorrectly as 12,000. We have corrected those cycle life limits to 8,900 and 9,000 CIS, respectively. We have removed the phrase ''one-time'' in reference to on-wing inspections. We also added a sentence to clarify that an on-wing inspection may be used to extend service life only once between shop visit inspections of the disk.

Since these changes expand the scope of the originally proposed rule, we determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Manufacturer's Service Information

We have reviewed and approved the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211–72–D428, Revision 3, dated June 30, 2003, that specifies a drawdown schedule for removing from service affected IP compressor stage 5 disks, using new RR Time Limits Manual (TLM), 05–10–01 cyclic limits. The MSB also describes procedures for optional inspections at each shop visit to extend the disk life beyond the lives specified. The Civil Aviation Authority (CAA), the airworthiness authority of the United Kingdom (U.K.), has classified this service bulletin as mandatory and issued AD 006–04–2002 to ensure the airworthiness of these RR turbofan engines in the U.K. We have also reviewed and approved the technical contents of Service Bulletin (SB) No. RB.211–72–E148, dated March 13, 2003 and SB No. RB.211–72–E150, Revision 1, dated June 4, 2003, that provide an optional on-wing ECI of the affected disks, to extend the disk life beyond the lives specified.

Differences Between This Proposed AD and the Manufacturer's Service Information

This proposed AD adds a requirement to change the service cyclic limits in the Time Limits Manual and to remove or inspect disks not later than 30 days after the effective date of this AD.

FAA's Determination of an Unsafe Condition and Proposed Actions

These engine models, manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require:

- Establishing new reduced IP compressor stage 5 disk cyclic limits.
- Removing from service affected disks that already exceed the new reduced cyclic limit.
- Removing other affected disks before exceeding their cyclic limits, using a drawdown schedule.
- Allowing optional inspections at each shop visit or an on-wing ECI to extend the disk life beyond the specified life.

The proposed AD would require you to use the service information described previously to perform these actions.

Economic Analysis

There are about 939 RR RB211–524 series turbofan engines of the affected design in the worldwide fleet. We estimate that 35 engines installed on airplanes of U.S. registry will be affected by this proposed AD. We also estimate that it will take about 8 work hours per engine to perform an inspection, and 300 work hours per engine to replace an IP compressor stage 5 disk. The average labor rate is $65 per work hour. Required parts will cost about $49,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,415,700.

Authority for This Rulemaking

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

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

Regulatory Analysis

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls Royce plc: Docket No. 2002–NE–40–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 4, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Rolls-Royce plc (RR) RB211–524 series turbofan engines listed in the following Table 1, with intermediate pressure (IP) compressor stage 5 disk part numbers (P/Ns) listed in Table 2 of this AD, installed.

TABLE 1.—ENGINE MODELS AFFECTED

–524B–02	–524B–B–02	–524B3–02	–524B4–02	–524B4–D–02
–524B2–19	–524B2–B–19	–524C2–19	–524C2–B–19	–524D4–19
–524D4–B–19	–524D4X–19	–524D4X–B–19	–524D4–39	–524D4–B–39
–524G2–19	–524G2–T–19	–524G3–19	–524G3–T–19	–524H2–19
–524H2–T–19	–524H–36	–524H–T–36		

These engines are installed on, but not limited to, Boeing 747, 767, and Lockheed L–1011 airplanes.

TABLE 2.—IP COMPRESSOR STAGE 5 DISK P/NS AFFECTED

LK60130	LK65932	LK69021	LK81269	LK83282
LK83283	UL12290	UL15743	UL15744	UL15745
UL19132	UL20785	UL20832	UL23291	UL25011
UL36821	UL36977	UL36978	UL36979	UL36980
UL36981	UL36982	UL36983	UL37078	UL37079
UL37080	UL37081	UL37082	UL37083	UL37084

Unsafe Condition

(d) This AD results from discovery of cracks in the cooling air hole areas of the disk front spacer arm. The actions specified in this AD are intended to prevent IP compressor stage 5 disk failure, which could result in uncontained engine failure and possible damage to the airplane.

Compliance

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

Cycle Limits

(f) Change the service cyclic limits contained in the Time Limits Manual, 05–10–01, for the IP compressor stage 5 discs installed in the engine models listed in the following Table 3, within 30 days after the effective date of this AD.

TABLE 3.—CYCLIC LIFE LIMITS WITHOUT QUALIFYING MAGNETIC PARTICLE INSPECTION (MPI) OR EDDY CURRENT INSPECTION (ECI)

Date of reduced life limit	Engine Models			
	–524G2, G2–T, G3, G3–T, H2, H2–T, H–36, H–T–36	–524D4, D4–B, D4–B–39, D4X, D4X–B, D4–39	–524B2, B2–B, C2, C2–B	–524B–02, B–B–02, B3–02, B4–02, B4–D–02
November 30, 2002	13,500 cycles-in-service (CIS)	16,150 CIS	16,000 CIS	16,200 CIS
April 1, 2003	13,500 CIS	13,500 CIS	13,500 CIS	14,000 CIS
December 1, 2003	12,000 CIS	13,500 CIS	13,500 CIS	14,000 CIS
December 1, 2004	11,000 CIS	13,500 CIS	12,000 CIS	12,000 CIS
December 1, 2005	11,000 CIS	12,000 CIS	12,000 CIS	12,000 CIS
December 1, 2008	7,830 CIS	8,700 CIS	8,900 CIS	9,000 CIS

Optional Inspections

(g) Before December 1, 2008, optional inspections are allowed at each shop visit or on-wing to extend the disk life. Guidance for these inspections is provided in paragraphs (h) or (i) of this AD.

Optional Inspections at Shop Visit

(h) Perform optional inspections at shop visit, as follows:

(1) Remove corrosion protection from IP stage 5 disk. Information on corrosion protection removal can be found in the Engine Manual.

(2) Visual-inspect and binocular-inspect the IP stage 5 disk for corrosion pitting at the cooling air holes and defender holes in the disk front spacer arm. Follow paragraph 3.C. of the Accomplishment Instructions of RR MSB No. RB.211–72–D428, Revision 3, dated June 30, 2003. Information on disk corrosion pitting limits can be found in the Engine Manual.

(i) If the disk has corrosion pitting in excess of limits, remove the disk from service.

(ii) If the disk is free from corrosion pitting, MPI the entire disk. Information on MPI can be found in the Engine Manual. If the disk passes MPI and no cracks are found, complete all other inspections, re-apply corrosion protection to disk, and return the disk to service in accordance with the cyclic limits allowed by paragraph (k) of this AD. Information on MPI limits can be found in the Engine Manual. Information on re-applying corrosion protection can be found in RR Repair FRS5900.

(iii) If the disk has corrosion pitting within limits, ECI all disk cooling air holes, defender holes, and inner and outer faces. Follow paragraph 3.D. of the Accomplishment Instructions of RR MSB No. RB.211–72–D428, Revision 3, dated June 30, 2003. Information on corrosion pitting limits can be found in the Engine Manual. If the disk passes ECI and no cracks are found, MPI the entire disk. Information on MPI can be found in the Engine Manual. If the disk passes MPI and no cracks are found, re-apply corrosion protection to disk, and return the disk to service in accordance with the cyclic limits allowed by paragraph (k) of this AD.

Optional On-Wing EC Inspections

(i) For RB211–524B2/C2 and RB211–524B4/D4 engine models, an on-wing ECI of the IP compressor stage 5 disk may be performed only once between shop visit inspections. Follow paragraphs 3.A. through 3.F. of the Accomplishment Instructions of RR SB No. RB.211–72–E148, dated March 13, 2003, and RR SB No. RB.211–72–E150, Revision 1, dated June 4, 2003, respectively, to do the ECI. If the disk passes the ECI and no cracks are found, an extension is allowed as specified in paragraph (k) of this AD.

Definition of Shop Visit

(j) For the purposes of this AD, a shop visit is defined as the separation of an engine major case flange. This definition excludes shop visits when only field maintenance type activities are performed in lieu of performing them on-wing. (*i.e.*, for purposes such as to perform an on-wing inspection of a tail engine installation on a Lockheed L–1011 airplane).

Cyclic Life Extension

(k) Disks that pass an optional inspection may remain in service after that inspection for the additional cycles listed in the following Table 4, until the next inspection, or December 1, 2008, or until the cyclic life limit published in the Time Limits Manual is reached, whichever occurs first.

TABLE 4.—CYCLIC LIFE EXTENSION

Engine models	–524G2, G2–T, G3, G3–T, H2, H2–T, H–36, H–T–36	–524D4, D4–B, D4–B–39, D4X, D4X–B, D4–39	–524B2, B2–B, C2, C2–B	–524B–02, B–B–02, B3–02, B4–02, B4–D–02
Extension After Passing MPI	1,600 cycles	2,000 cycles	2,000 cycles	2,000 cycles.

TABLE 4.—CYCLIC LIFE EXTENSION—Continued

Engine models	–524G2, G2–T, G3, G3–T, H2, H2–T, H–36, H–T–36	–524D4, D4–B, D4–B–39, D4X, D4X–B, D4–39	–524B2, B2–B, C2, C2–B	–524B–02, B–B–02, B3–02, B4–02, B4–D–02
Extension After Passing In-Shop ECI	3,800 cycles	4,500 cycles	4,500 cycles	4,500 cycles.
Extension After Passing On-Wing ECI	1,000 cycles	1,200 cycles	1,200 cycles	1,200 cycles.

Disks That Have Been Intermixed Between Engine Models

(l) Information on intermixing disks between engine models can be found in the RR Time Limits Manual, 05–00–01.

Alternative Methods of Compliance

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

Credit for Previous Inspections

(n) Inspections done using RR SB No. RB.211–72–E150, dated April 17, 2003 are acceptable in meeting the requirements of this AD.

Reporting Requirement

(o) Report findings of all inspections of the IP stage 5 disk using paragraph 3.B.(2) of the Accomplishment Instructions of RR ASB RB.211–72–D428, Revision 3, dated June 30, 2003. The Office of Management and Budget (OMB) has approved the reporting requirements specified in Paragraph 3.B. of the Accomplishment Instructions of RR ASB RB.211–72–D428, Revision 3, dated June 30, 2003, and assigned OMB control number 2120–0056.

Related Information

(p) CAA airworthiness directive 006–04–2002, dated April 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on January 25, 2005.

Francis A. Favara,

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

[FR Doc. 05–1799 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 32]

RIN: 1513–AA90

Proposed Establishment of the Covelo Viticultural Area (2003R–412P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 38,000-acre ''Covelo'' viticultural area in Mendocino County, California, about 150 miles north of San Francisco. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before April 4, 2005.

ADDRESSES: You may send comments to any of the following addresses:

• Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 32, P.O. Box 14412, Washington, DC 20044–4412.

• 202–927–8525 (facsimile).

• *nprm@ttb.gov* (e-mail).

• *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.

• *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, AVA Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville Street, No.158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

• Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

• Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;

• Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
• A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
• A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Covelo Petition

Ralph Carter of Sonoma, California, submitted a petition to establish the ''Covelo'' viticultural area in northern Mendocino County, California. The proposed Covelo area is about 150 miles north of San Francisco and 45 miles north of Ukiah. The proposed boundary encompasses Round Valley, Williams Valley, and the surrounding foothills. The small, rural town of Covelo lies within Round Valley, and a portion of the Round Valley Indian Reservation overlaps the proposed area's northern end.

This 38,000-acre area currently has 2 acres of planted grape vines, with the potential for more vineyard development in the valley and on the surrounding hillsides, according to the petition. The petition does not document a history of grape growing in the proposed area.

According to the petition, the bowl-shaped basin of Round Valley, which lies within the proposed Covelo viticultural area, is distinctly different from the long, narrow valleys more commonly found in Mendocino County. In addition, the petition notes that the soils in the proposed Covelo area are, for the most part, very deep, nearly level loam, which differ significantly from the soils in the surrounding areas. The proposed Covelo area has a shorter growing season when compared with other Mendocino County viticultural areas, the petition states, along with comparatively high annual rain levels and some snow.

Name Evidence

Covelo is the name of a small, rural town within Round Valley in Mendocino County, California. The town appears on the United States Geological Survey (USGS) quadrangle maps of Covelo East and Covelo West, and on the 2002 Rand McNally California map provided with the petition. The California State Automobile Association's Mendocino and Sonoma Coast map identifies Covelo as a rural township in northwest California. The 1988 DeLorme Northern California map also shows the town of Covelo and ''Covelo Road'' (State Highway 162), which runs through the proposed viticultural area.

The National Oceanic and Atmospheric Administration's California Climatological Data report of October 1999 includes temperature data for the Covelo weather station. The Covelo East USGS quadrangle map shows that the Covelo Ranger Station is about a mile north of the town.

Boundary Evidence

The distinctive elements of the proposed Covelo viticultural area, the petition states, are its geography, climate, and growing season. The proposed Covelo area, as described in the petition and noted on USGS maps, is largely a round, flat valley isolated from surrounding regions by a ring of foothills and mountains. The petitioner included the foothills immediately adjacent to valley floor within the proposed area because of the hillside's viticultural potential, but excluded the higher and steeper mountainous terrain beyond the proposed area's boundary since that mountainous terrain is less suitable for commercial viticulture.

The petition explains that the proposed area's boundaries encompass Covelo's microclimate, which is created by the distinct combination of the area's geographic self-containment and its inland location. The area's climate has significant day and night temperature differences, and a short grape-growing season. This isolated valley climate differs from the marine-influenced climate found in most of the surrounding regions of Mendocino County.

The petitioner drew the proposed area's boundary using a series of peaks and elevation benchmarks in the hills surrounding the Round and Williams Valleys. These elevation points vary from a low of 1,762 feet on the proposed area's southern boundary to a high of 2,792 feet on its northern boundary.

Growing Conditions

Geography

The proposed Covelo viticultural area's boundary surrounds Round Valley, the bowl-shaped basin in which the town of Covelo lies. This broad, round, and flat-floored valley differs significantly from the long, narrow valleys commonly found in mountainous areas of Mendocino County, according to the petition. The proposed area also includes the smaller Williams Valley, located to Round Valley's northeast, and the hillsides that surround the two valleys. The provided USGS maps note that Round Valley's floor varies from 1,310 feet in elevation in the southeast to 1,480 feet in elevation in the northwest, while the surrounding hillsides are less than 2,800 feet high.

As noted above, the petitioner used a series of peaks and elevation points under 2,800 feet in elevation to draw the boundary of the proposed Covelo viticultural area. In contrast to the proposed area, the higher elevations of the mountains that surround it vary between 4,000 and 7,000 feet in elevation, according to the petition. These higher mountains, the petition explains, geographically and climatically isolate the proposed Covelo viticultural area from surrounding regions.

Climate

The high mountain peaks that surround the proposed area, and the Coast Range, which parallels the Pacific Ocean to the area's west, block the inland flow of climate-moderating marine air and fog into the proposed Covelo viticultural area, according to the petition. Given this geographic isolation, the petition notes, the proposed Covelo viticultural area has a continental climate, which has greater temperature swings and a shorter growing season than the marine-influenced climate commonly found in the surrounding regions of Mendocino County.

The proposed Covelo viticultural area's short growing season, the petition emphasizes, may be its most distinguishing characteristic. The frost-free growing season is commonly 125 days, or about four months, long. Covelo's average growing season minimum temperature is also significantly lower than that of the established Potter Valley viticultural area (27 CFR 9.82), which is about 33 miles to the proposed area's south.

The petition states that with 3,000 degree days, the Covelo viticultural area marginally falls into Region 3, of Winkler's climate classification system. (During the growing season, one degree day accumulates for each degree Fahrenheit that a day's average temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.) The table below shows the petitioner's comparison of degree day for grape-growing regions near the proposed Covelo viticultural area.

Mendocino grape-growing regions	Summation of growing season degree-day units
Covelo	3,000
Hopland	3,313
Potter Valley viticultural area (27 CFR 9.82)	3,341
Redwood Valley viticultural area (27 CFR 9.153)	2,914
Ukiah	3,460
Willits	2,224

According to the petition, the proposed Covelo viticultural area's summer temperatures have greater day-to-night variations (between 40 and 66 degrees in the valley) than the areas surrounding it. Also, in October (the final month of the summer growing season) the proposed viticultural area has 90 fewer degree-day units of heat than other Region 3 viticultural areas in the Mendocino region.

The proposed Covelo viticultural area, the petition notes, receives an average of 40 inches of rain a year, which is the highest average of any valley in northern Mendocino County. The petition explains, however, that annual rainfall in the proposed area varies widely. In 1998, the proposed Covelo viticultural area received 65 inches of rain, while in 2000, it received 36 inches, according to the National Oceanic and Atmospheric Administration's Climatological Data Annual Summary reports of California for 1997 through 2001, which were included in the petition. In addition, the proposed Covelo viticultural area's valley basin receives about 7 inches of snow annually, with higher amounts falling on the surrounding hillsides.

Geology and Soils

The petition notes that the proposed Covelo viticultural area is composed of alluvial plains, alluvial fans, and a valley basin, which are geographically younger than the surrounding higher elevations. While the alluvial deposits on the valley floor share the mineralogy of the Franciscan rocks of the surrounding hills, the petition explains that Covelo's valley basin soils differ distinctly from the soils found in the foothills surrounding the valley.

As noted in the petition, Feliz-Russian-Cole soils cover about 50 percent of the proposed Covelo viticultural area. These soils, which are found in the Round Valley basin, have neutral-to-alkaline soil pH chemistry, in contrast with the acidity found in the hillside soils.

The Sanhedren-Speaker-Kekawaka association, which is a deep to very deep, well-drained loam and gravelly loam, predominates in the northern, eastern, and western foothills surrounding Round Valley, according to the petition. In the southern foothills, the Dingman-Beaughton-Henneke association (a well-drained, gravelly loam and cobbly clay loam) and the Hopland-Yorktree-Witherell association (a well-drained loam and sandy loam) predominate.

The petition adds that soils of the Franciscan Formation, a blue schist and semi-schist of Franciscan Complex, cover the mountainous terrain above the proposed area's boundary.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner(s) provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, "Covelo," will be recognized as a name of viticultural significance. Consequently, wine bottlers using "Covelo" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. The proposed part 9 regulatory text set forth in this document specifies the "Covelo" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name "Covelo" for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Covelo viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Covelo viticultural area on brand labels that include the words "Covelo" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

• *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

Online form: We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.

• *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- × 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ Covelo.

(a) *Name.* The name of the viticultural area described in this section is ''Covelo''. For purposes of part 4 of this chapter, ''Covelo'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Covelo viticultural area are four United States Geological Survey (USGS) 1:24,000 scale topographic maps. They are titled:

(1) Dos Rios, California Quadrangle—Mendocino Co., 7.5 Minute Series, edition of 1967, revised 1994;

(2) Covelo West, California Quadrangle—Mendocino Co., 7.5 Minute Series, edition of 1967, photoinspected 1973;

(3) Covelo East, California Quadrangle—Mendocino Co., 7.5 Minute Series, edition of 1967, revised 1994; and

(4) Jamison Ridge, California Quadrangle—Mendocino Co., 7.5 Minute Series, edition of 1967, revised 1994.

(c) *Boundary.* The Covelo viticultural area surrounds the town of Covelo in northern Mendocino County, California, about 30 miles east of the Pacific Coastline. The area's boundaries are defined as follows—

(1) Beginning on the Dos Rios Quadrangle map at the intersection of State Highway 162 and the section 25 and 36 boundary line, T22N, R13W (labeled Inspiration Point on the map), proceed west 0.3 miles on Highway 162 to BM 2006 in section 36, T22N, R13W; then

(2) Proceed straight west-northwest 1.5 miles to the 2,537-foot elevation point in the northwest quadrant of section 26, T22N, R13W, Dos Rios Quadrangle; then

(3) Proceed straight northwest 1.6 miles to the 2,488-foot peak in the northwest quadrant of section 22, T22N, R13W, Covelo West Quadrangle; then

(4) Proceed straight north-northwest 0.75 miles to the 2,262-foot peak on the section 15 and 16 boundary line, and continue straight north 1.6 miles to the 2,247-foot peak on the section 3 and 4 boundary line; then

(5) Proceed straight northerly 1 mile to the 1,974-foot peak on the shared T22N and T23N boundary line, Covelo West Quadrangle, and continue straight north 1.6 miles to the 2,290-foot peak in the northwest quadrant of section 27, T23N, R13W, Covelo West Quadrangle; then

(6) Proceed straight northeast 1.2 miles to the 2,397-foot peak in the northeast quadrant of section 22, and continue straight northeast 1.5 miles to BM 2210 in the northeast quadrant of section 14, T23N, R13W, Covelo West Quadrangle; then

(7) Proceed straight east-southeast 1.75 miles to the 2,792-foot peak in the southwest quadrant of section 18, T23, R12W, Covelo East Quadrangle; then

(8) Proceed straight north-northeasterly 0.9 mile to the 2,430-foot elevation point in the southeast quadrant of section 7, T23N, R12W, Covelo East Quadrangle; then

(9) Proceed straight east-northeast 1.6 miles to the peak of Coyote Rock in section 9, T23N, R12W, Covelo East Quadrangle; then

(10) Proceed straight east-southeast 1.55 miles to the 2,435-foot elevation point in the northern half of section 15, and continue straight southeast 2.3 miles to the 2,066-foot peak in the southwest quadrant of section 24, T23N, R12W, Covelo East Quadrangle; then

(11) Proceed straight south-southwest 0.6 mile to the 2,024-foot peak near the

section 26 eastern boundary line, T23N, R12W, Covelo East Quadrangle; then

(12) Proceed straight west-southwest 1.9 miles to the 2,183-foot peak in the northwest quadrant of section 34, T23N, R12W, Covelo East Quadrangle; then

(13) Proceed straight south-southeast 1.2 miles to the 1,953-foot peak in the northeast quadrant of section 3, T22N, R12W, Covelo East Quadrangle; then

(14) Proceed straight southerly 0.9 mile to the 2,012-foot peak in the northeast quadrant of section 10, T22N, R12W, Covelo East Quadrangle; then

(15) Proceed straight south-southeast 1.4 miles along Dingman Ridge to the 2,228-foot peak along the section 14 and 15 boundary line, T22N, R12W, Covelo East Quadrangle; then

(16) Proceed straight southeast 0.95 mile to the 2,398-foot peak in the northeast quadrant of section 23, T22N, R12W, Covelo East Quadrangle; then

(17) Proceed straight south-southeast 1.75 miles to the 2,474-foot elevation point along the section 25 and 26 boundary line, T22N, R12W, Jamison Ridge Quadrangle; then

(18) Proceed straight west-southwest 0.9 mile to BM 2217 in the southwest quadrant of section 26, and continue straight westerly 1.5 miles to the 2,230-foot peak northwest of Iron Spring, in the southeast quadrant of section 28, T22N, R12W, Jamison Ridge Quadrangle; then

(19) Proceed straight southwest 0.65 mile to the 2,022-foot peak along the unimproved road in section 33, T22N, R12W, Jamison Ridge Quadrangle; then

(20) Proceed straight west-northwest 1.5 miles to the 1,762-foot peak in the northeast quadrant of section 31, and continue in the same line of direction 1.1 miles to the beginning point at the intersection of State Highway 162 and the section 25 and 36 boundary line, T22N, R13W (labeled Inspiration Point), on the Dos Rios Quadrangle map.

Signed: January 25, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–1875 Filed 2–1–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 31; Re: ATF Notice Nos. 960 and 966; TTB Notice No. 6]

RIN: 1513–AA39

Proposed Red Hill Douglas County, OR Viticultural Area (2001R–88P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau reopens the comment period for Notice No. 960, a notice of proposed rulemaking published in the **Federal Register** to add ''Red Hill (Oregon)'' as an approved American viticultural area. We are re-opening the comment period for 30 days to solicit comments on a new proposed name, ''Red Hill Douglas County, Oregon.'' The petitioner suggested the new name because the originally proposed name could be confused with similar names of other geographical areas and with brand names used on wines from those other areas.

DATES: Written comments must be received on or before March 4, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 31, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the original petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400. You may also access copies of this notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2002, the Bureau of Alcohol, Tobacco and Firearms, the predecessor agency to the Alcohol and Tobacco Tax and Trade Bureau (TTB), published in the **Federal Register** as Notice No. 960 (67 FR 66079) a notice of proposed rulemaking regarding the establishment of the Red Hill (Oregon) viticultural area. The notice requested comments by December 30, 2002, from all interested persons.

Notice No. 960 included a discussion of the name evidence for Red Hill. As noted in Notice No. 960, the Red Hill name has been used in Douglas County, Oregon, for over 100 years. Historically, the Applegate and the Scott families settled at the foot of Red Hill in the mid-19th century. By 1879, settlers established a school district in the Red Hill area, and built a schoolhouse on Red Hill Road (identified in the southeast corner of the United States Geological Survey (USGS) Drain, Oregon, map in section 26, T23S/R5W. The school district operated until 1943 when it merged with the Pleasant Valley District. ''Douglas County Schools, A History Outline,'' by Larry Moulton, October 2000, includes a hand-drawn map and directions to the ''Red Hill School Site.'' The Red Hill School now stands abandoned.

The USGS Drain, Oregon, map labels ''Red Hill'' in sections 35, 26 and 23, T23S/R5W. The map also identifies a light duty road meandering through the region as ''Red Hill Road.'' Interstate 5 signage at exit number 150 in northern Douglas County, Oregon, includes the ''Red Hill'' name and directional information to the area. The USGS Geographical Names Information System identifies ''Red Hill'' as an area in Douglas County, Oregon. Douglas County is located in southwest Oregon, as noted the Oregon-Washington American Automobile Association State Series map, published February 2003, and on page 92, ''Oregon,'' of the American Map 2002 Road Atlas.

After publication of Notice No. 960, TTB twice re-opened the comment period for additional public comments on the entire petition. Notice No. 966 (68 FR 2262), published on January 16, 2003, requested comments by March 17, 2003. TTB Notice No. 6 (68 FR 20090), published on April 24, 2003, requested comments by May 27, 2004.

In response to these notices, TTB received a total of 32 comments, with 16 supporting and 12 opposing the petition, 1 requesting an extension of the comment period, and 3 requesting a public hearing.

Supporting commenters focused on the distinctive features of the proposed area and the locally known Red Hill name. Opposing commenters expressed concern about the potential name confusion with other geographical areas, the similarity of the proposed name to other wine brand names, and the geographical and climatic evidence submitted for the proposed area.

After reviewing the comments, TTB suggested that the petitioner provide an alternative name for the proposed viticultural area because its originally proposed name could be confused with similar names of other geographical areas and with brand names used on wines from those other areas. The petitioner, after some consideration, withdrew the original ''Red Hill (Oregon)'' name and proposed in its place the name ''Red Hill Douglas County, Oregon.'' TTB believes the Red Hill Douglas County, Oregon name is appropriate for the area and will not create any confusion with other geographical areas or wine brand names that contain the words ''Red Hill.''

Accordingly, we are reopening the comment period for Notice No. 960 for the specific purpose of eliciting comments on the new name for the proposed viticultural area. We are also modifying the proposed part 9 regulatory text by adding a second sentence to paragraph (a) to define the viticultural significance of the new proposed name. We explain the impact of the adoption of this viticultural area name and its relevance to this comment solicitation in more detail below.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Red Hill Douglas County, Oregon,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''Red Hill Douglas County, Oregon'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural name standing alone, such as ''Red Hill,'' would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Red Hill Douglas County, Oregon'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name. If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Red Hill Douglas County, Oregon'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Red Hill Douglas County, Oregon viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Changes to Proposed Boundary Description

In addition to the name change discussed above, the proposed regulatory text set forth in this notice includes a redraft of the boundary description for the petitioned-for viticultural area. We took this action to ensure ease of understanding and to describe the boundary line in a clockwise rotation. The redrafted description makes no change to the location of the boundary as set forth in Notice No. 960.

Public Participation

Comments Invited

We invite comments from interested members of the public on the new proposed ''Red Hill Douglas County, Oregon'' viticultural area name and on the redrafted boundary description. Please provide any available specific information in support of your comments. We will not consider comments on other aspects of Notice No. 960 that are not addresses in this notice.

Because of the potential impact of the establishment of the proposed Red Hill Douglas County, Oregon viticultural area on brand labels that include the words ''Red Hill Douglas County, Oregon'' as discussed above under ''Impact on Current Wine Labels,'' we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full name ''Red Hill Douglas County, Oregon'' should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that other parts of the name, standing alone, would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of a part of the name, standing alone, on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Red Hill Douglas County, Oregon viticultural area.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. All comments must include this notice number and your name and mailing address. Your comment must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

• *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.

• *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- by 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

Notice No. 960 was issued under the authority of 27 U.S.C. 205. For the reasons discussed in the preambles of Notice No. 960 and this notice, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.175 to read as follows:

§ 9.175 Red Hill Douglas County, Oregon.

(a) *Name.* The name of the viticultural area described in this section is ''Red Hill Douglas County, Oregon''. For purposes of part 4 of this chapter, ''Red Hill Douglas County, Oregon'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Red Hill Douglas County, Oregon viticultural area are three United States Geological Survey (USGS) 1:24,000 scale topographic maps. They are:

(1) Sutherlin, OR (Provisional Edition 1988);

(2) Scotts Valley, OR (Provisional Edition 1987); and

(3) Yoncalla, OR (Provisional Edition 1987).

(c) *Boundary.* The Red Hill Douglas County, Oregon viticultural area is located in Douglas County, Oregon, east of Interstate 5 near the hamlet of Rice Hill, between the villages of Yoncalla and Oakland.

(1) Beginning on the Yoncalla map along the southern boundary of section 35, T23S/R5W, at the point where a pipeline crosses the T23S/T24S township line, proceed due west 0.8 mile along the T23S/24S township line to its intersection with the 800-foot contour line just west of Pollock Creek in section 34, T23S/R5W (Yoncalla Quadrangle); then

(2) Proceed southerly along the meandering 800-foot contour line, cross onto the Sutherlin map in section 10, T24S/R5W, and continue westerly along the 800-foot contour line to its first intersection with the eastern boundary of section 8, T24S/R5W (Sutherlin Quadrangle); then

(3) Proceed northerly along the meandering 800-foot contour line, return to the Yoncalla map in section 9, T23S/R5W, and continue northerly along the 800-foot contour line to its intersection with the T23S/T24S township line very near the northwest corner of section 4, T24S/R5W (Yoncalla Quadrangle); then

(4) Proceed northeasterly along the 800-foot contour line, cross Wilson Creek in the northern portion of section 23, T23S/R5W, pass onto the Scotts Valley map in section 14, T23S/R5W, and continue northeasterly along the 800-foot contour line to its intersection with the R4W/R5W range line, which at that point is also the eastern boundary of section 1, T23S/R5W (Scotts Valley Quadrangle); then

(5) Proceed southwesterly along the 800-foot contour line, re-cross the R4W/R5W range line, and continue to the second intersection of the 800-foot contour line and the pipeline in section 1, T23S/R5W, (Scotts Valley Quadrangle); then

(6) Proceed 5.75 miles southwesterly along the pipeline, cross Wilson Creek in section 24, T23S/R5W, return to the Yoncalla map in section 26, T23S/R5W, and continue southwesterly along the pipeline to the point of beginning at the intersection of the pipeline and the T23S/T24S township line in section 35, T23S/R5W (Yoncalla Quadrangle).

Signed: January 26, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–1874 Filed 2–1–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0005; FRL–7867–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Missouri for the purpose of establishing vapor line requirements necessary to achieve Stage I vapor recovery air quality benefits in Clay, Jackson, and Platte counties in Missouri.

DATES: Comments on this proposed action must be received in writing by March 4, 2005.

ADDRESSES: Comments may be mailed to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: January 18, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 05–1992 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 155

[OPP–2005–0014; FRL–7696–7]

RIN–2070–AD29

Pesticides; Procedural Regulations for Registration Review; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: This document notifies the public that theAdministrator of EPA has forwarded to the Secretary of Agriculture a draft proposed rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The draft proposed rule would establish procedures for conducting a periodic review of pesticide registrations. FIFRA section 3(g) directs the Agency to establish by regulation procedures for reviewing pesticide registrations, with a goal of reviewing each pesticide's registration every 15 years. The purpose of this review is to assure that a pesticide continues to meet the FIFRA standard for registration. The legislative history for FIFRA 3(g) noted that because safety standards change over time, it is necessary to assure that pesticides continue to meet these standards as new knowledge and information are developed.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9341; fax number: (703) 305–5884; e-mail address: *prunier.vivian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It simply announces the submission of a draft proposed rule to USDA and does not otherwise affect any specific entities. This action may, however, be of particular interest to you if you hold pesticide registrations, use pesticides, or are interested in the regulation of the sale, distribution or uses of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification number OPP–2005–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include the comments of the Secretary and the Administrator's response to those comments in the proposed rule when published in the **Federal Register**. If the Secretary does not comment in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a proposed rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Part 155

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: January 18, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–1990 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Gentry Indigo Bush as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce a 90-day administrative finding on a petition to list the Gentry indigo bush (*Dalea tentaculoides*) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that listing the Gentry indigo bush may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

DATES: The administrative finding announced in this document was made on January 25, 2005. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by April 4, 2005.

ADDRESSES: Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. The petition, administrative finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mima Falk, Plant Ecologist, at the Tucson Sub-Office, 201 North Bonita Ave, Suite 141, Tucson, Arizona, 85745, or at 520–670–6150 x 225.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). This finding summarizes information included in the petition and information available to us at the time of the petition review. Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our finding considers whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous, critical analysis of the best available scientific and commercial information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and Information Quality Act.

On January 7, 2002, we received a petition dated January 2, 2002, requesting that we list the Gentry indigo bush (*Dalea tentaculoides*) as an endangered species, and that critical habitat be designated concurrently with the listing. The petition, submitted by the Center for Biological Diversity (Center), was clearly identified as a petition for a listing rule, and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated April 25, 2002. In that letter, we also advised the petitioners that due to funding constraints in fiscal year (FY) 2002, we would not be able to begin processing the petition in a timely manner.

On January 21, 2003, the Center sent a Notice of Intent to sue for violating the Act by failing to make a timely 90-day finding on the petition to list the Gentry indigo bush. On September 17, 2003, the Center filed a complaint against the Secretary of the Interior and FWS for failure to make a 90-day petition finding under section 4 of the Act for the Gentry indigo bush. In a Stipulated Settlement Agreement, signed June 14, 2004, we agreed to submit a 90-day finding to the **Federal Register** by January 31, 2005 [*Center for Biological Diversity* v. *Norton*, CV 03–473–TUC–FRZ (D. Az)]. This notice constitutes our 90-day finding for the petition to list the Gentry indigo bush.

Biology and Distribution

Gentry indigo bush is an erect perennial shrub that grows from a woody root crown and can be up to 1 meter (m) (3.2 feet (ft)) tall. It is a member of the Leguminosae (Pea) Family. The leaves are compound, 3–6 centimeters (cm) (1.2–2.4 inches (in)) long with 9–17 pairs of leaflets. The leaflets are hairless, notched at the tip, and dotted with punctuate (translucent pitted glands or colored dots) glands on the lower surface. The flowers are sessile (lacking a stalk), 6 millimeters (mm) (0.24 in) in length, and are presented in oblong clusters. The flower petals are rose-purple. Plants flower in the spring, from late March to mid-May. They may produce a second set of flowers in late summer and fall in response to monsoon precipitation.

Howard S. Gentry originally described the species in 1950. It is a distinctive member of the genus *Dalea* with no closely related species (Gentry 1950, Barneby 1977). The main distinguishing character that serves to separate this species from other sympatric species is the presence of elongate, brown tentacle-like glands on the calyx (the outer whorl of flowering parts) lobes, floral bracts (the reduced or modified leaf subtending a flower), and branches.

Gentry indigo bush has been known historically from only three areas in southern Arizona: the west and north sides of the Baboquivari Mountains (Tohono O'odham Nation), the Coyote Mountains (Mendoza Canyon), and Sycamore Canyon (Coronado National Forest) in the Atascosa Mountains. Today, the only known extant population in the United States is in Sycamore Canyon. The plant was located in Mexico (NE of Huasabas in the State of Sonora) in 1995, and in 2004, the species was reported from Sierra El Humo, SSW of Sasabe, Arizona, in northwestern Sonora, Mexico (L. Hahn, pers. comm., 2004). (The 2004 location information was not included in the petition.) There was no population information provided on the Mexican locations.

It is likely that the species still persists in the Baboquivari Mountains, but there have been no recent surveys to verify the presence of the species. These sites are within the Tohono O'odham Nation, and surveys could only be conducted by Tribal members or with permission from the Tribe. A status report for Gentry indigo bush was completed in 1992 (Gori *et al.*), and all of the known historical locations (except on the Tohono O'odham Nation) were surveyed. Areas of suitable habitat were also surveyed. No plants were found in the Coyote Mountains, and the authors surmised in the status report that the population was extirpated, possibly due to past grazing practices. In the status report the authors stated, ''Mendoza Canyon was heavily grazed by cattle and dominated by *Acacia greggii* (catclaw acacia) to an extent we have rarely encountered in Southern Arizona. Such heavy cover of invasive shrubs is indicative of a long history of overgrazing.'' No plants were located in any of the other areas surveyed, including canyons in the following mountain ranges in Sonora, Mexico: Sierra Cibuta, La Colorada, Sierra el Tigre, Sierra los Ajos, Sierra Azul, Arroyo Las Fresnos, Sierra San Diego, La Angostura, and Sierra San Luis (Gori *et al.* 1992).

Gentry indigo bush grows in scattered patches at elevations of 1,097 to 1,219 m (3,600 to 4,000 ft) in Sycamore Canyon and several side channels. Plants are usually found on floodplain terraces in sandy or gravel soils, or, less commonly, on talus slopes close to the floodplain. The usual tree canopy for Gentry indigo bush consists of Arizona sycamore (*Platanus wrightii*), Arizona ash (*Fraxinus velutina*), Arizona walnut (*Juglans major*), and several oak species. Plants can be found growing under these trees or out in the open. Gentry indigo bush grows in the semi-active floodplain, meaning they are exposed to periodic flooding and scouring events. Observations made by Gori *et al.* (1992) and Falk (1993) support the idea that plants are adapted to periodic, low-intensity floods. Plants that had been covered with sediment were found to be growing up through the deposited material. The plants reproduce vegetatively (asexually) and roots almost always connect young plants to nearby larger clumps. To date, there has been no documented sexual reproduction in the field. In fact, plants rarely, if ever, have been observed to produce seed (Falk 1993, Gori et al 1992). Staff from the Desert Botanical Garden collected approximately 50 seeds from plants they assumed to be Gentry indigo bush in 1998, but no germination tests have been conducted (K. Rice, pers. comm. 2004).

This species has adaptations to withstand periodic, low-intensity flooding, but the population in Sycamore Canyon has experienced population fluctuations, some of those associated with flood events. Following severe winter flooding in 1993, a large portion of a monitoring plot that had been established on a floodplain terrace washed away and the population declined to 15–30 plants (Falk 1993). Gori *et al.* (1992) estimated that there were 1,400 ''individuals'' in Sycamore Canyon before the heavy rains of 1993.

Previous Federal Actions

Gentry indigo bush was determined to be a candidate species as published in the 1980 Plant Notice of Review (45 FR 82480). A species with candidate status is one for which we have collected and assessed information sufficient to propose listing the species. The removal of candidate status for Gentry indigo bush was published on April 2, 1998 (63 FR 16217). The reasons supporting removal from the candidate list were (1) the taxon was more abundant or widespread than previously believed or not subject to any identifiable threats; and (2) the FWS had insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. However, as described below, subsequent information from the U.S. Forest Service describes a significant decline in the only known U.S. population.

Status Concerns

Gentry indigo bush has always been considered rare. Gori *et al.* (1992) refer to the species as ''extremely rare.'' The loss of the population documented from Mendoza Canyon in the Coyote Mountains increased concerns regarding this rare taxon. Gentry indigo bush was once collected on the west slope of the Baboquivari Mountains. Toolin (1982) was unable to locate the species in 1981 and observed that the habitat had been ''exceedingly modified'' by overgrazing. This observation lends some uncertainty to the status of the populations on the Tohono O'odham Nation as the grazing regime is unknown in this area. Given these circumstances, attention on this species in the United States has been focused on the remaining population in Sycamore Canyon. As stated earlier, numbers of that population fluctuated dramatically between 1992 and 1993; numbers dropped from 1,400 to between 15–30 plants. Additional survey work in Mexico has documented at least two locations of Gentry indigo bush from Mexico, but we have no information on the size of those populations. Also, we have no information related to the threats to these populations and are unaware of any protection for these sites.

A status report (Toolin 1982) documented only 100 plants from Sycamore Canyon. The Sycamore Canyon population was assessed in 1997 (Bertelsen), and 499 individuals were located. A survey by Brooks (1999) found 194 plants in Sycamore and Penasco Canyons (a tributary to Sycamore). Since that time, there has been no systematic survey of Sycamore Canyon to determine the status of this population. A Forest Service biologist reported seeing some patches of Gentry indigo bush while surveying for Sonora chub in the canyon (2000, 2001).

An internal memorandum to our files (Roller 1998) concluded ''the species capacity to recover does not negate the threat of extirpation to this extremely localized endemic, as it relates to extreme flood events within the watershed.'' We also expressed concern with the observed lack of seed production as this leaves the species without an effective seed bank that would be needed in order to recover from a catastrophic flood event.

Conservation Status

Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: ''(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; (E) other natural or manmade factors affecting its continued existence.'' The petitioners contend that four of the five factors (A, C, D, and E) are applicable to the Gentry indigo bush (see below). A brief discussion of how each of the five listing factors applies to the Gentry indigo bush follows:

Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range.

With respect to Factor A, the petitioners cite the loss of plants and alteration of habitat associated with livestock grazing as threats to the Gentry indigo bush. The petitioners note that Gentry indigo plants are palatable to livestock, subject to trampling, and that livestock grazing may alter the stream dynamics associated with Gentry indigo bush habitat. The alteration of stream habitat includes soil compaction, streambank erosion, and removal of riparian vegetation. Although the Gentry indigo bush may benefit from some disturbance due to its ability to reproduce asexually, increased surface runoff, higher intensity floods, stream downcutting, and increased scouring and deposition could contribute to the elimination of populations.

Information currently available indicates that the loss of plants and habitat to these causes may be a significant threat to the status of this species. Toolin (1982) states, ''Habitat of this species in canyons on the west slope of the Baboquivari Mountains where this species formerly occurred has been exceedingly modified by over-grazing by livestock, and that population has apparently been extirpated.'' Gori *et al.* (1992) concluded, ''Our surveys of Sycamore and Mendoza Canyons lead us to believe that grazing constitutes a threat to *D. tentaculoides.* We observed direct evidence of livestock browsing on, and even uprooting, the species in lower Sycamore Canyon where trespass cows from Mexico enter the canyon up to an impassable narrows.''

Sycamore Canyon is within the boundaries of the Coronado National Forest, Nogales Ranger District. It is also within a designated Research Natural Area (Goodding RNA). Livestock grazing is not permitted within the boundaries of the RNA, but trespass cattle use has been a sporadic problem (U.S. Department of Agriculture 1998). Cattle have been observed in the upper reaches of the canyon (Falk pers. observation, Brooks 1999), and Brooks noted heavy cattle use below ''the narrows,'' most likely attributable to trespass livestock from Mexico. In 1997, the Forest Service proposed a set of actions in Sycamore Canyon to protect the federally threatened Sonora chub (*Gila ditaenia*). One of those actions included building a fence at the northern portion of the canyon to restrict livestock access to the riparian areas. If this fence is maintained, it could help alleviate problems with cattle in the upper reaches of Sycamore Canyon. However, trespass cattle from Mexico are another problem. Sycamore Canyon extends south into Mexico. Historically, the border fence has been in a state of continual disrepair. In the fall of 1998, 2.4 kilometers (km) (1.5 miles (mi)) of fence along the border was repaired. We do not know the current condition of this fence. Recent increases in undocumented U.S. and Mexico border crossing activity contribute to the fence being continually cut.

Watershed degradation maybe a concern in this canyon. The Bear Valley allotment surrounds Sycamore Canyon. It is 9,197.5 hectares (ha) (22,710 acres (ac)) in size. Site-specific soil surveys (2002) indicated that 75 percent of the allotment is in satisfactory condition, 16 percent impaired, 8 percent unsatisfactory and 1 percent is unsuitable condition. A Forest Service hydrologist (Lefevre 2000) concluded, ''Mankind's influence on Sycamore Canyon is mostly related to downcutting of the channel system, sediment movement, and sediment yield to the stream. Human settlement and cattle grazing, and the roads associated with these activities, has resulted in erosion rates above that which would be expected under unroaded, unmined and ungrazed conditions. The effects of this additional sediment may be seen in the reaches of the channel where deposits of gravel have filled pools. Downcut channel reaches may also be attributed to mankind's effects on the uplands because peak flows were artificially increased during the past century.''

The movement of water and sediment in Sycamore Canyon may have affected the plants. After the 1993 El Niño winter rains, most of the monitoring plot had been washed away and the plant population had experienced a dramatic decline, with more than 90 percent of the known individuals washed away or covered with sediment. Recovery has been slow; at last count there were only 194 plants in Sycamore Canyon (Brooks 1999). That is only 14 percent of the 1,400 plants documented in 1992. The watershed conditions in the Sycamore Canyon drainage may have contributed to the current status of Gentry indigo bush.

Factor B: Overutilization for commercial, recreational, scientific, or educational purposes.

With respect to Factor B, the petitioners did not provide information. We also have no information on the overutilization of this plant species for commercial, recreational, educational, or scientific purposes.

Factor C: Disease or predation.

With respect to Factor C, the petitioners again referred to the plant's palatability, both to livestock and rabbits. They provided one observation of a plant being almost totally eaten by a rabbit (Brooks 1999). We acknowledge that rabbits may eat plants, but do not think this constitutes a major threat to the species because of the size of mature plants. We have already discussed the effects of livestock grazing on Gentry indigo bush under Factor A.

Factor D: The inadequacy of existing regulatory mechanisms.

With respect to Factor D, the petitioners cite the inadequacies of the protections put forth by the Forest Service for the Goodding RNA and Sycamore Canyon. The Forest Service has stated that Gentry indigo bush is afforded a high level of protection because it shares its habitat with critical habitat of the federally listed Sonora chub. The Forest Service has done much work to improve the habitat of Sonora chub, including removal of a road at the mouth of Sycamore Canyon, protection of riparian areas at the northern end of Sycamore Canyon, and the expansion of the Goodding RNA. These actions have contributed to improvement of Sonora chub habitat and perhaps to Gentry indigo bush habitat.

There are several other possible management concerns in the canyon. The cutting of the border fence with Mexico continues to be an issue. Until this is resolved, cattle from Mexico will continue to enter Sycamore Canyon and graze on Gentry indigo bush. Undocumented migrants crossing the border into the United States also use this area. Human traffic associated with this activity in the canyon bottom may directly trample plants and is likely contributing to Gentry indigo bush habitat degradation.

The amount of sediment and surface runoff within the Sycamore Canyon watershed may continue to affect Gentry indigo bush. The plants have adaptations for persisting with flood events, but it is unknown when the threshold will be crossed, in terms of the magnitude of flows, that will likely remove the population from the canyon. Recovery may be hampered by the seemingly low reproductive potential of this plant. The Forest Service maintains a road density of 0.58 km/km^2 (0.93 mile/mi^2) within the watershed and considers these roads to be ''a primary source of erosion and sediment'' (Lefevre 2000). The Forest Service has no plans to address the effects of roads in Sycamore Canyon watershed; thus there will continue to be sediment deposition and scouring in and along the stream channel.

Sycamore Canyon is a very popular place for recreation. The petitioners cite trampling and compaction of soils from foot traffic as negatively affecting the Gentry indigo bush in Sycamore Canyon. Gentry indigo bush plants grow on the floodplain terraces where hikers often create trails to avoid walking in the stream (Falk, pers. observation). Due to its narrow width, there are limited terraces in the canyon intensifying the use of Gentry indigo bush habitat as places to create trails. These activities degrade habitat and may reduce the areas occupied by Gentry indigo bush. We know of no plan to address the effects of recreation in this area.

The Forest Service has not systematically monitored the species on its land. While lack of monitoring is not a direct threat to the species, it does prevent us from adequately assessing the current status of the population. New information would greatly enhance our status review.

Two locations have been noted in Mexico. We have no information on population status or threats at these sites. We are not aware of any protection for these areas. As such, until further information is provided, we do not know how the Mexican populations will contribute to the status of this species.

Factor E: Other natural or manmade factors affecting its continued existence.

With respect to Factor E, the petitioners cite the rarity of the species and the possible extinction risk associated with stochastic events such as drought, flood, and wildfire. This species would most likely be negatively affected by environmental stochasticity (variations over time in the population's operational environment) and natural catastrophes (Menges 1991). We agree, based both on information presented by the petitioner and other information in our files. The most likely scenario is that of catastrophic flooding. Increased rainfall combined with an altered hydrograph in Sycamore Canyon may result in the species being washed out. Long-term drought (as the one we are currently in) may affect the species' ability to recover. The combination of small population size, reduced reproductive potential, and isolation makes this species vulnerable to extinction.

Finding

On the basis of our review, we find that the petition presents substantial information indicating that listing the Gentry indigo bush may be warranted. The main potential threat to the species appears to be loss of plants and habitat associated with heavy livestock use, an altered hydrograph in Sycamore Canyon, sediment loads in the Sycamore Canyon watershed, and the effects of recreation and other human uses of the drainage. There is also a possible increased risk of extinction associated with small, isolated populations from stochastic events.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that an emergency listing is not warranted at this time, because the population has recovered in some degree, the population is within a RNA with some protections, and the potential exists for additional populations in Mexico. However, if at any time we determine that emergency listing of the Gentry indigo bush is warranted, we will seek to initiate an emergency listing.

The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the Gentry indigo bush is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Gentry indigo bush. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Gentry indigo bush. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat, especially where it occurs in Mexico.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (*see* **ADDRESSES** section).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (*see* **ADDRESSES** section).

Author

The primary author of this document is Mima Falk, Tucson Sub-Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 2005.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–1905 Filed 2–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU12

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) and Proposed Delisting of the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding and proposed rule.

SUMMARY: We the U.S. Fish and Wildlife Service (Service) announce a 12-month finding on a petition to delist the Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*) under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). After reviewing the best scientific and commercial information available, we find that the petitioned action is warranted and propose to delist or remove Preble's from the List of Endangered and Threatened Wildlife. We propose this action based on a review of all available data, which indicate that Preble's is not a discrete taxonomic entity, does not meet the definition of a subspecies, and was listed in error. Before this proposed action is finalized, the Service will conduct a status review and evaluate threats to the combined *Z. h. campestris* entity in all or a significant portion of its range. We will also analyze whether the Preble's portion of *Z. h. campestris* qualifies as a Distinct Population Segment in need of protection. We seek comments from the public regarding this proposal.

DATES: We will consider comments on this notice and proposed rule received until the close of business on May 3, 2005. Requests for public hearings must be received by us on or before March 21, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this notice and proposal by one of several methods:

1. You may submit written comments to Field Supervisor, Colorado Field Office, Ecological Services, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.
2. You may hand-deliver comments to our Colorado Field Office at the above address or send via facsimile (fax: (303) 275–2371).
3. You may send comments via electronic mail (e-mail) to *FW6_PMJM@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this 12-month finding and proposed rule, will be available for inspection, by appointment, during normal business hours, at the above address.

To request a public hearing, submit a request in writing to the Colorado Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, at the above address or telephone 303–275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's was listed as threatened on May 13, 1998 (63 FR 26517). At the time of listing, the primary threat to Preble's was habitat loss and degradation caused by agricultural, residential, commercial, and industrial development. On December 23, 2003, we received two petitions, from Coloradans for Water Conservation and Development and the State of Wyoming's Office of the Governor, to remove Preble's from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Act. Both petitions maintain Preble's should be delisted based on ''data error'' (*i.e.*, subsequent investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error) and ''taxonomic revision'' (*i.e.*, Preble's is not a valid subspecies). As explained in our 1996 Petition Management Guidance (Service 1996), subsequent petitions are treated separately only when they are greater in scope than, or broaden the area of review of, the first petition. In this case, as both petitions were almost identical, the State of Wyoming's petition was treated as a comment on the first petition received.

On March 31, 2004, we published a 90-day finding in the **Federal Register** that the petition presented substantial information to indicate the petitioned action may be warranted (69 FR 16944). Section 4(b)(3)(B) of the Act requires that within 12 months after receiving a petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings—(a) The petitioned action is not warranted; (b) the petitioned action is warranted; or (c) the petitioned action is warranted but precluded by pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**. In accordance with section 4(b)(3)(A) of the Act, we have now completed a review of the best available scientific and commercial information on the species and have reached a determination that the petitioned action is warranted. When the proposed action is warranted, it should be accompanied by, or promptly followed by, a proposed rule to implement the warranted action. In this case, we have combined the 12-month finding and the proposed delisting rule into a single document.

General Species Information

Meadow jumping mice (*Zapus hudsonius*) are small rodents with long tails, large hind feet, and long hind legs. The tail is bicolored, lightly-furred, and typically twice as long as the body. Meadow jumping mice have a distinct, dark, broad stripe on their backs that runs from head to tail and is bordered on either side by gray to orange-brown fur. The underside fur is white and very fine in texture. Total length of an adult meadow jumping mouse is approximately 180 to 250 millimeters (mm) (7 to 10 inches (in)), with the tail comprising 108 to 155 mm (4 to 6 in) of that length (Krutzsch 1954, Fitzgerald *et al.* 1994).

Across its range, meadow jumping mice typically occur in moist habitats, including low undergrowth consisting of grasses, forbs, or both, in open wet meadows and riparian corridors, or where tall shrubs and low trees provide adequate cover (Krutzsch 1954, Quimby 1951, Armstrong 1972). Meadow jumping mice prefer lowlands with medium to high moisture over drier uplands. Fitzgerald *et al.* (1994) described meadow jumping mice as most common in wooded areas. Because adequate herbaceous or grassy ground cover is essential for the species, meadow jumping mice in the northern Great Plains are restricted primarily to riparian habitats (Jones *et al.* 1983).

Meadow jumping mice are primarily nocturnal or crepuscular, but also may be active during the day, when they have been seen moving around or sitting under a shrub (Shenk 1998). These mice are nomadic, and may roam up to 1 kilometer (km) (0.6 mile (mi)) in search of moist habitat. Meadow jumping mice usually move in hops of about 3 to 15 centimeters (cm) (1 to 6 in), but are capable of taking a few long jumps of 60 to 90 cm (2 to 3 feet). Meadow jumping mice, including Preble's, are true hibernators. Preble's usually enter hibernation in September or October and emerge the following May, after a potential hibernation period of 7 or 8 months. Adult Preble's reach weights that enable them to enter hibernation as early as the third week in August, whereas young of the year typically enter hibernation in September and October (Meaney *et al.* 2003).

Additional species information is available in the May 13, 1998, final rule to list the Preble's as a threatened species (63 FR 26517) and the June 23, 2003, final rule to designate critical habitat for the Preble's (68 FR 37275).

Taxonomy

The Preble's is a member of the family *Dipodidae* (jumping mice) (Holden 1992), which contains four extant genera. Two of these, *Zapus* and *Napaeozapus,* are found in North America (Hall 1981, Wilson and Ruff 1999).

In his 1899 study of North American jumping mice, Edward A. Preble concluded there were 10 species in the *Zapus* genus. According to Preble, meadow jumping mice (*Z. hudsonius*) included five subspecies. Preble classified all specimens of meadow jumping mice from the States of North Dakota, Montana, South Dakota, Wyoming, Nebraska, Colorado, and Missouri as *Z. h. campestris.*

Krutzsch (1954) revised the taxonomy of the genus after studying morphological characteristics of 3,600 specimens of *Zapus.* This revision recognized only 3 distinct species of jumping mice; the meadow jumping mouse, the western jumping mouse (*Z. princeps*), and the Pacific jumping mouse (*Z. trinotatus*), comprised of 11, 11, and 4 subspecies, respectively. Krutzsch relegated the majority of species previously recognized by Preble (1899) to subspecific status. Krutzsch based his reduction in the number of distinct species on Mayr's (1942) species concept, which defined species as actual or potential interbreeding individuals or populations that are reproductively isolated from other such groups. Mayr described a subspecies as a geographically localized subdivision of the species, which differs genetically and taxonomically (as illustrated by significant morphological characteristics) from other subdivisions of the species.

Krutzsch retained the name *Z. h. campestris,* but restricted its use to specimens from the Black Hills and Bear Lodge Mountains of northeastern Wyoming, southwestern South Dakota, and adjacent southeastern Montana. Individuals from North Dakota, and northwestern, central, and eastern South Dakota were classified as the subspecies *Z. h. intermedius.* Krutzsch described and named *Z. h. preblei* (Preble's) as separate from *Z. h. campestris* (Bear Lodge meadow jumping mouse) based on 11 specimens (4 adult and 7 non-adult). Krutzsch stated that although ''the specimens of *Z. h. preblei* are few, the differences between this and neighboring named kinds is considerable.'' Krutzsch also commented on the presence of physical habitat barriers and lack of known intergradation between Preble's, known only from eastern Colorado and southeastern Wyoming, and other identified subspecies of the meadow jumping mouse ranging to the east and north. Among recognized subspecies, Krutzsch found that Preble's most closely resembled the Bear Lodge meadow jumping mouse from northeastern Wyoming, but summarized differences in coloration and skull characteristics. Preble's was recognized as one of twelve subspecies of meadow jumping mouse by Hafner *et al.* (1981).

Jones (1981) examined the morphology of 9,900 *Zapus* specimens from across North America. Jones concluded that the Pacific jumping mouse was not a valid taxon and suggested reducing the number of species in the genus to two (the western jumping mouse and the meadow jumping mouse). At the subspecific level, Jones concluded that there was ''no evidence of any population of *Zapus hudsonius* being sufficiently isolated or distinct to warrant subspecific status'' and ''No named subspecies is geographically restricted by a barrier, with the possible exception of *Z. h. preblei.*'' Jones made the statements above based on the subspecies concept proposed by Whitaker (1970) which said—(1) Subspecies must be divided by primary isolating mechanisms that stop or significantly reduce gene flow; (2) in the absence of primary isolating mechanisms, subspecies would still be capable of interbreeding; and (3) the existence of primary isolating mechanisms can be inferred from the genetic distinctness of subspecies, as evidenced by unique characteristics. The conclusions reached by Jones have not been incorporated into the formal taxonomy of the genus. These conclusions were never published in a peer-reviewed journal; therefore, the scientific community never formally assessed the validity of this work.

In a report to the Colorado Division of Wildlife, Riggs *et al.* (1997) analyzed mitochondrial deoxyribonucleic acid (mtDNA) from tissue samples of meadow jumping mice and western jumping mice from Colorado and Wyoming and concluded that Preble's mice form a homogenous group recognizably distinct from nearby populations of meadow jumping mice and adjacent species of the genus. Hafner (1997) reviewed the Riggs study, inspected Riggs' original sequence data, and agreed that Preble's form a relatively homogenous group compared to neighboring subspecies. Ramey *et al.* (2004) reviewed the Riggs study, and criticized the methodology for not rigorously testing whether Preble's formed a monophyletic group (*i.e.*, a grouping of evolutionary lineages that includes a common ancestor and all descendent lineages) and for not providing statistical tests to support their conclusions.

Ramey *et al.* (2004) (a revision of Ramey *et al.* 2003 considered in the 90-day finding) examined four lines of evidence to test the taxonomic validity of the Preble's as described by Krutzsch (1954). First, they performed a phylogenetic and population genetic analysis of mtDNA sequence data, primarily from museum specimens of four subspecies of meadow jumping mouse, including Preble's (58 specimens), the Bear Lodge meadow jumping mouse (33 specimens), *Zapus hudsonius luteus* (32 specimens), and *Z. h. pallidus* (35 specimens). Ramey *et al.* used Z. princeps princeps (7 specimens), *Z. p. idahoensis* (3 specimens), and *Z. p. utahensis* (7 specimens) as the outgroup for the phylogenetic analysis. An outgroup is an organism from a distantly related group that shares a common ancestor with the group in question. Using an analysis of molecular variance (AMOVA), Ramey *et al.* examined genetic variation in a hierarchical fashion within and between Preble's and Bear Lodge meadow jumping mouse. This comparison revealed most of the genetic variation was within subspecies (64 percent) rather than among these subspecies (37 percent). Additionally, they found that all 4 identified Preble's mtDNA haplotypes were included within the 16 identified Bear Lodge meadow jumping mouse mtDNA haplotypes. However, Ramey *et al.* also documented a high level of mtDNA variation (nucleotide diversity) in Bear Lodge meadow jumping mouse compared to Preble's, ''making these subspecies seem more diverged than the shared mtDNA haplotypes indicate.''

Ramey *et al.* (2004) believed these findings are consistent with a founder effect. A founder effect is the establishment of a new population by a few original founders that carry only a small fraction of the total genetic variation of the parental population. A population may be descended from a small number of ancestral individuals for two reasons—(1) A small number of individuals may colonize a place previously uninhabited by their species; or (2) an established population may fluctuate in size such that a population passes through a ''bottleneck'' in which only a few individuals survive, and later expands again under more favorable conditions. Ramey *et al.* speculated that there were population ''bottlenecks'' during southward colonization into what is now Preble's range. Based on their results and analysis, the authors concluded that Preble's is a less genetically diverse population of Bear Lodge meadow jumping mouse.

Second, Ramey *et al.* (2004) completed a morphometric analysis on skull measurements of the Preble's and the Bear Lodge meadow jumping mouse (testing the same nine skull measurements that Krutzsch (1954) used to support his taxonomic assertions). Four repeated measurements were taken with digital calipers and recorded to the nearest hundredth of a millimeter as per Conner and Shenk (2003). Ramey *et al.* employed the following criterion for testing distinguishability between subspecies—≥ 90 percent of specimens correctly classified at a posterior probability of p> 0.95. Employing this method, the analysis of Ramey *et al.* found no basis for the quantitative morphological skull differences Krutzsch noted. While significant difference was observed between the Preble's and the Bear Lodge meadow jumping mouse in three of the nine skull measurements, two of these three differences did not correspond to those Krutzsch described.

Third, Ramey *et al.* (2004) performed a critical review of Krutzsch's qualitative description of Preble's as a subspecies. The authors found that the skull shape and pelage differences noted by Krutzsch (1954) had no quantitative basis and considered them ''unsupported opinion.''

Fourth, Ramey *et al.* (2004) discussed ecological distinctiveness as an integral part of the species concept presented by Crandall *et al.* (2000). Crandall *et al.* (2000) proposed a hypothesis-testing approach describing management units based upon genetic and ecological distinctiveness. Crandall *et al.* advocated that ecological differences among populations can drive adaptive change that would not be detected by molecular markers alone. Ramey *et al.* also examined the literature for evidence of ecological differences between subspecies. They found no published ecological evidence for discreteness between Preble's and the Bear Lodge meadow jumping mouse. Ramey *et al.* asserts that this lack of published information supports his conclusion that these subspecies should be synonymized.

Ramey *et al.* (2004) concluded that, based on the lack of genetic, morphological, or published ecological evidence for genetic distinctiveness between the Preble's and the Bear Lodge meadow jumping mouse, these subspecies should be synonymized (considered the same subspecies) as *Zapus hudsonius campestris.* This taxonomic revision has not yet been published in a peer-reviewed journal and has not been incorporated into the formal taxonomy of the genus.

Peer Review of Ramey et al. 2004

The Ramey *et al.* (2004) report has undergone peer review. The Colorado Division of Wildlife solicited and received nine peer reviews of this report and transmitted those reviews to the Service on April 24, 2004. We solicited additional peer reviews focused on specific aspects of the report from seven scientists. In addition to the report, the Service sent reviewers maps of the meadow jumping mouse range; the May 13, 1998, final rule to list Preble's (63 FR 26517); and a November 5, 2003, working draft of a recovery plan for Preble's. Five peer reviewers responded to Service questions and provided comments on the study. Reviews from all 14 peer reviewers ranged from strong support of the work, to pointed criticism of study design, data interpretation, and conclusions. These reviews are available in their entirety at *http://mountain-prairie.fws.gov/preble/.* Because Ramey *et al.* 2004 remains unpublished, these peer reviews were crucial in our consideration of what constitutes the best scientific and commercial information available regarding the taxonomy of this subspecies. A summary of the peer reviews and other public comments follow below.

Of the 14 peer reviews, 5 supported the Ramey *et al.* (2004) study and its conclusions (Robert Bradley, Texas Tech, in litt. 2004; Keith Crandall, Brigham Young University, in litt. 2004; David Hafner, New Mexico Museum of Natural History, in litt. 2004; Brett Riddle, University of Nevada, Las Vegas, in litt. 2004; Lisette Waits, University of Idaho, in litt. 2004), 3 leaned toward support of the study and its conclusions (Carron Meaney, Meaney and Associates, Boulder, Colorado, in litt. 2004; Jeffry Mitton, University of Colorado, Boulder, in litt. 2004; Jack Sites, Brigham Young University, in litt. 2004), and 6 were generally critical of the study or skeptical of its conclusions (David Armstrong, University of Colorado, Boulder, in litt. 2004; Mary Ashley, University of Illinois at Chicago, in litt. 2004; Mary Conner, Utah State University, in litt. 2004; Marlis Douglas, Colorado State University, in litt. 2004; Sara Oyler-McCance, University of Denver and the Rocky Mountain Center for Conservation Genetics and Systematics, in litt. 2004; Gary White, Colorado State University, in litt. 2004). However, some of these peer reviewers were also supportive of portions of the study.

Those who supported the conclusions of Ramey *et al.* (2004) generally accepted most aspects of the report. Bradley (in litt. 2004) wrote that Ramey *et al.* was an ''excellent piece of work'' on a controversial issue and particularly liked the study design intended to test a series of hypotheses. Bradley thought that the morphological and mtDNA analyses are convincing in that the two taxa actually represent a single taxon. Crandall (in litt. 2004) believed appropriate markers and methods were used and that the conclusions were ''right on''; he found the study impressive in its inclusion of both genetic and morphometric data coupled with an evaluation of previous work. Crandall thought the conclusions are well founded and well supported by the data. Hafner (in litt. 2004) noted that Ramey *et al.* employed appropriate methods, markers, evidence, and interpretation to convincingly argue that Preble's is not a valid subspecies, but that the synonymized entity remains imperiled. Riddle (in litt. 2004) thought that the data supported a lack of substantial morphological, ecological, and molecular differentiation between these two subspecies. Riddle thought this was a common outcome of molecular analyses of taxonomic subspecies within close geographic proximity, that are ecologically similar, and appear to have no surmounting biogeographic obstacles to movements across the landscape (from a historical perspective). While he did not support retaining Preble's and Bear Lodge meadow jumping mouse as separate taxonomic units, Riddle was concerned for the conservation status of the synonymized taxonomic unit. Waits (in litt. 2004) believed that the authors provided convincing evidence for synonymizing because the hypothesis testing did not reject the hypothesis that the two are essentially the same morphologically and genetically. Meaney (in litt. 2004) did not take a definitive position on the results or conclusions of Ramey *et al.*, but called the paper overall good science. Mitton (in litt. 2004) noted that appropriate markers and methods were used and suggested he would support the conclusions of Ramey *et al.* if the grounds for the removal of certain specimens could be validated. Jack Sites (Brigham Young University, in litt. 2004) viewed Ramey *et al.* as tentative support for synonymizing and suggested synonymizing if subsequent study validated their results.

Of the reviewers critical of the report, most felt its conclusion that Preble's and the Bear Lodge meadow jumping mouse should be synonymized went beyond the data presented. Armstrong (in litt. 2004) saw the report as ''a small piece of the puzzle of geographic variation in the meadow jumping mouse'' and suggested that ''a restricted, targeted investigation of this kind, laid out in an unpublished report, is not an appropriate vehicle for a taxonomic decision of the kind proposed.'' Ashley (in litt. 2004) suggested that more data is needed to synonymize. Conner (in litt. 2004) thought that ecological, behavioral, physiological, and geographic factors needed to be included in any testing of Preble's taxonomy. Douglas (in litt. 2004) stated, ''Limitations of the data affect resolution of analysis and thus render the results inconclusive'' and that ''the overall tone of the manuscript lacks objectivity.'' Oyler-McCance (in litt. 2004) had ''no problem with the study itself except for some of the conclusions made by the authors,'' and did not feel that this study resolves the taxonomic question. Regarding the report's conclusion, White (in litt. 2004) stated, ''the report should conclude that no differences were detected given the measurements conducted, and should not jump to the unfounded conclusion that the two subspecies are identical.''

Several reviewers discussed the use of mtDNA to delineate valid subspecies used by Ramey *et al.* (2004). For example, Douglas (in litt. 2004) noted that a timespan of greater than 10,000 years is the limit for mtDNA resolution and that taxa more recently diverged would be difficult to detect via mtDNA analysis. Oyler-McCance (in litt. 2004) noted that the genetic data gathered by Ramey *et al.* is from only one locus, and that this locus represents only the maternal history, which could very well differ from other genetic material of the subspecies. Oyler-McCance, Sites (in litt. 2004) and Riddle discussed the potential for introgression of Bear Lodge meadow jumping mouse mtDNA on the Preble's nuclear background, but Riddle thought it unlikely to have happened simultaneously across the entire range of Preble's, given the generally fragmented nature of Preble's populations.

Another issue bought up by several reviewers was use of ''ancient DNA'' from museum specimens. Ramey *et al.* (2004) noted that since museum collections are accessible for future scientific research, reliance on museum specimens means the study is repeatable. Douglas (in litt. 2004) noted that the use of museum specimens allows for specimens to be obtained from a large geographic area and for a study to be completed in short order. However, Douglas also detailed numerous problems with the use of ancient DNA such as the quality of DNA extracted from museum specimens is often inferior, making amplification difficult or the contamination of high-quality DNA from other samples possible.

Another issue associated with the use of ancient DNA is the size of DNA fragments (*i.e.*, the number of base pairs). Ramey *et al.* (2004) analyzed 355 base pairs of sequence data. Douglas (in litt. 2004) noted that this is a marginal data set for population level analyses; as a general rule, at least 1,000 base pairs should be evaluated to substantiate findings and make results conclusive. Although a larger number of base pairs is desirable (Courtney *et al.* 2004), mtDNA studies often utilize less than 1,000 base pairs (Riggs *et al.* 1997; Haig *et al.* 2004).

Other issues were brought up by the reviewers. Douglas (in litt. 2004) also questioned the use of western jumping mouse as Ramey *et al.*'s outgroup. Several reviewers discussed Ramey *et al.*'s removal of a number of specimens from their study and suggested their presumed identities be verified through further testing (Armstrong in litt. 2004; Douglas in litt. 2004; Mitton in litt. 2004; Hafner in litt. 2004). Ashley (in litt. 2004), Oyler-McCance (in litt. 2004), and Douglas (in litt. 2004) questioned Ramey *et al.*'s reliance on an AMOVA to evaluate variation within and among groups. Specifically, the standard for a subspecies employed by Ramey *et al.* requires greater diversity among accepted subspecies than within them. Ashley (in litt. 2004) also questioned the use of variation within and among groups as a ''very strict criterion'' to judge a subspecies'' validity, and suggested that based on haplotype frequencies the two subspecies are ''genetically quite distinct.''

A number of the reviewers detailed the strengths and the weaknesses of the morphological portion of the analysis performed in Ramey *et al.* (2004). For example, Meaney (in litt. 2004) found that the morphometric data and analysis appear solid. Ashley (in litt. 2004) and Sites (in litt. 2004) noted Ramey *et al.*'s strongest case for synonymizing comes from the morphological aspects of the report, rather than the genetics analysis.

Many of the reviewers, such as Waits (in litt. 2004), Meaney (in litt. 2004) and Riddle (in litt. 2004) discussed the conclusion by Ramey *et al.* (2004) regarding ecological discreteness. Ashley (in litt. 2004), Conner (in litt. 2004), Douglas (in litt. 2004), and Oyler-McCance (in litt. 2004) said it was not clear that there had been any evaluation of ecological difference and noted that the authors gave no references, making it difficult to judge how thoroughly they looked. Conner and Oyler-McCance also questioned what variables were compared. In Crandall's view (in litt. 2004), clear ecological differences over evolutionary time would result in morphologic differences; as none were found, a lack of ecological differences can be inferred. Overall, Crandall and Mitton (in litt. 2004) agreed with Ramey *et al.* (2004) that there did not appear to be clear ecological distinctions between Preble's and closely related taxa that justify conservation for Preble's.

Other Public Comments

On March 31, 2004, we published a notice in the **Federal Register** (69 FR 16944) that the petition received on December 17, 2003, to delist Preble's presented substantial information to indicate the petitioned action may be warranted. As part of this Notice, we requested information on the genetic and taxonomic classification of Preble's, the abundance and distribution of the subspecies, and the threats faced by Preble's in relation to the five listing factors (as defined in section 4(a)(1) of the Act). In response, we received nine letters containing comments and information from government agencies (Colorado Department of Natural Resources, El Paso Board of County Commissioners, Douglas County Open Space and Natural Resources), organizations (Colorado Farm Bureau, Center for Native Ecosystems, Coloradans for Water Conservation and Development), and individuals. As noted above, 14 peer reviews of Ramey *et al.* 2004a were received and considered. For a full discussion of this issue, read the Peer Review section of this notice above.

Colorado Department of Natural Resources called for the immediate delisting of the Preble's based on genetic studies by Ramey *et al.* (2004a) and increases in known occurrence. They contended that essential conservation efforts to protect the Preble's in Colorado would be carried on by State and local governments regardless of Federal listing status. They also provided extensive documentation of State and county efforts to conserve habitats within the Preble's range in Colorado.

The El Paso County Board of County Commissioners supported delisting, described their efforts toward development of a regional Habitat Conservation Plan, and suggested that a decision to delist would save the county and its citizens time and money. The Douglas County Division of Open Space and Natural Resources described habitat conditions and conservation measures employed in Douglas County, and commented that Douglas County populations should not be considered a distinct population segment of wider jumping mouse distribution.

In a single letter representing their combined comments, the Center for Native Ecosystems, Biodiversity Conservation Alliance, Native Ecosystem Council, and Forest Guardians opposed delisting of the Preble's. They discussed abundance and distribution of Preble's, genetics and taxonomic classification, threats to Preble's, and the status of the Bear Lodge meadow jumping mouse. The Colorado Farm Bureau supported delisting of Preble's and commented on the lack of threats to Preble's from agricultural activities. The Coloradans for Water Conservation and Development, one of the petitioners, provided comments that largely paralleled the contentions made in their petition. Three private individuals provided comments—One contending that delisting based on available genetic studies was premature; one largely criticizing the original listing; and one discussing threats to Preble's in the broader context of human impacts to the environment.

Petition Finding

We have carefully assessed the best scientific and commercial information regarding the taxonomy and biology of this species. We reviewed the petition and associated documents, information available in our files, and other published and unpublished information submitted to us during the public comment period following our 90-day petition finding. We reviewed new data and other information on the genetics, taxonomy, life history, ecology, status, and existing threats to Preble's.

At this time, we view Ramey *et al.* (2004) as the best scientific and commercial information available regarding the taxonomy of the Preble's and Bear Lodge meadow jumping mouse. Within the next year, the Service expects additional genetics information (*i.e.*, nuclear DNA results) that will verify (or refute) the conclusions of Ramey *et al.* The peer reviews of the report suggested a majority (8 out of 14) either support or lean toward supporting the taxonomic conclusions of Ramey *et al.* (2004). Therefore, on the basis of the lack of distinct genetic and morphologic differences between the two putative subspecies, we conclude that Preble's is likely not a valid subspecies of meadow jumping mice (*Zapus hudsonius*). Based on the above conclusion, we find that the petitioned action is warranted because the original listing of Preble's as a subspecies of meadow jumping mouse was in error. Accordingly, we propose to delist or remove Preble's from the List of Endangered and Threatened Wildlife in 50 CFR 17.11.

The Service will evaluate threats to the combined entity (*Zapus hudsonius campestris*) in all or a significant portion of its range before this rule is finalized. This finding and proposed rule do not attempt to analyze threats to the combined entity, *Z. h. campestris.* We are initiating a status review and will analyze the threats to the species in the final rule. Finally, as discussed in the 90-day finding (69 FR 16944), the Service will analyze whether the Preble's portion of *Z. h. campestris* qualifies as a Distinct Population Segment in need of protection before this rule is finalized.

At this time, the Service is seeking additional information to perform this analysis. We currently have only limited information regarding the distribution, life history, ecology, and habitat of Bear Lodge meadow jumping mouse portion of *Z. h. campestris,* and no information regarding its abundance or population trends. While we have some information regarding land management and habitat conditions in the Black Hills, we lack information connecting these habitat conditions to population effects. Therefore, we are seeking additional information and data on meadow jumping mouse in the vicinity of the Black Hills. More detail of what is sought is outlined in the Public Comments Solicited section of this proposed notice and rule.

In making this determination we have followed the procedures set forth in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424).

Effects of the Rule

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary of the Department of the Interior (Secretary) that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat was designated for the Preble's on June 23, 2003 (68 FR 37275). The designation included eight habitat units totaling approximately 12,632 hectares (31,222 acres) found along 578.1 km (359.2 mi) of rivers and streams in eastern Colorado and in southeastern Wyoming. The designation includes river and stream reaches and adjacent areas in the North Platte River and South Platte River drainages. By removing the Preble's from the List of Endangered and Threatened Wildlife, this proposal, if finalized, will eliminate all currently designated critical habitat for the species.

Special Regulations Under Section 4(d)

Section 9 of the Act prohibits take of endangered wildlife. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. While section 9 of the Act establishes prohibitions applicable to endangered species, the Service has issued regulations (50 CFR 17.31) applying those same prohibitions to threatened wildlife. These regulations may be tailored for a particular threatened species through promulgation of a special rule under section 4(d) of the Act. When a special rule has been established for a threatened species, the general regulations for some section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions, and exemptions, necessary and advisable to conserve that species.

On May 22, 2001, the Service adopted special regulations governing take of the threatened Preble's (66 FR 28125). The special regulations provide exemption from take provisions under section 9 of the Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water. On October 1, 2002, the Service amended those regulations to provide exemptions for certain activities related to noxious weed control and ongoing ditch maintenance activities (67 FR 61531). On February 24, 2004, the Service proposed permanent extension of the amended special regulations (69 FR 8359). On May 20, 2004, the Service extended the special regulations permanently (69 FR 29101). The current special regulations at 50 CFR 17.40(l) will be eliminated by this proposal, if finalized, because Preble's will no longer be protected by the Act.

Future Conservation Measures

Section 4(g)(1) of the Act requires us to monitor a species for at least 5 years after it is delisted based on recovery. Because Preble's is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this animal species following its delisting.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Generally, we seek information, data, and comments concerning the taxonomic classification and conservation status of Preble's and Bear Lodge meadow jumping mouse. More specifically, we seek data from any systematic surveys for Bear Lodge meadow jumping mouse, as well as any studies that may show population size or trends. We request quantitative information regarding the life history, ecology, and habitat use of Bear Lodge meadow jumping mouse, as well as information regarding the applicability of information relevant to other subspecies. We solicit information on the threats faced by the Bear Lodge meadow jumping mouse and Preble's in relation to the five listing factors (as defined in section 4(a)(1) of the Act). We seek information regarding the effects of current land management on population distribution and abundance of Bear Lodge meadow jumping mouse. And finally, we seek information regarding the possibility of contact and interaction between Bear Lodge meadow jumping mouse and adjacent subspecies of meadow jumping mouse (*i.e., Zapus hudsonius intermedius* and *Z. h. pallidus*) or other information informing a Distinct Population Segment analysis.

Submit comments as indicated under **ADDRESSES**. If you wish to submit comments by e-mail, please avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at the above address. In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Colorado Field Office, Ecological Services, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting of this species. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input as part of our process of making a final decision on the proposal.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

A complete list of all references cited herein is available upon request from the Colorado Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for ''Mouse, Preble's meadow jumping'' under ''Mammals'' from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. Section 17.40 is amended by removing and reserving paragraph (l).

§ 17.95 [Amended]

4. Section 17.95(a) is amended by removing the entry for critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*).

Dated: January 28, 2005.

Marshall P. Jones Jr.,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–2020 Filed 1–31–05; 10:56 am]

BILLING CODE 4310–JB–P

Notices

Federal Register
Vol. 70, No. 21
Wednesday, February 2, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 27, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Expanded Food and Nutrition Education Program (EFNEP).

OMB Control Number: 0524–NEW.

Summary of Collection: The Department of Agriculture's Cooperative State Research, Education, and Extension Service (CSREES), Expanded Food and Nutrition Education Program (EFNEP) is a unique program that began in 1969, designed to reach limited resource audiences, especially youth and families with young children. EFNEP operates in 50 states of the United States, American Samoa, Guam, Micronesia, and the Commonwealth of the Northern Marianas, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States. The objectives of EFNEP are to assist limited resource families and youth in acquiring the knowledge, skills, attitudes, and changed behaviors necessary for making diet decisions that are nutritionally sound, and to contribute to their personal development and the improvement of the total family diet and nutritional well being.

Need and Use of the Information: CSREES will collect information using the Evaluation/Reporting System (E/RS) a database that was develop to capture the impacts of EFNEP. The system will provide a variety of reports that are useful for management purposes, provide diagnostic assessments of participants needs and export summary data for State and National assessment of the program's impact. E/RS stores information in the form of records about the program participants, their family structure and their dietary practices. Without the information it would be extremely difficult for the national office to compare, assess, and analyze the effectiveness and the impact of EFNEP without the annual collection of data.

Description of Respondents: State, local or tribal government.

Number of Respondents: 56.

Frequency of Responses: Recordkeeping; reporting: annually.

Total Burden Hours: 69,588.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–1881 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 27, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Commercial Use of Woodsy Owl Symbol—36 CFR Part 272.

OMB Control Number: 0596–0087.

Summary of Collection: The Forest Service National Symbols Coordinator will evaluate the data to determine if an individual corporation, or organization, requesting a license to use the Woodsy Owl symbol commercially should be granted a license or, if currently licensed, to determine the royalty fee the licensed entity must pay to the agency based on a percentage of the licensee's total sales and whether the licensed entity has met its stated objectives. Part 272 of title 36 CFR authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees for such use. An individual or corporation may apply for a Woodsy Owl license by contacting Forest Service personnel by telephone, fax, and e-mail or by writing.

Need and Use of the Information: FS will collect information to determine how long the individual, corporation, or organization has been in business; the products the individual, corporation, or organization sells or plans to see; the geographical location from which the products will be sold; the projected sales volume; and how the individual, corporation, or organization plans to market the products. If information is not collected royalty fees would not be collected in keeping with federal cash management policies, and quantity of merchandise objectives would not be effectively monitored.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: quarterly.

Total Burden Hours: 20.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–1882 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–050N]

Codex Alimentarius Commission: Twenty-sixth Session of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), United States Department of Health and Human Services, are sponsoring a public meeting on March 15, 2005, to provide information and receive public comments on agenda items that will be discussed at the Twenty-sixth Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex). The 26th Session of the CCMAS will be held in Budapest, Hungary, April 4–8, 2005. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the agenda items that will be discussed at this forthcoming session of the CCMAS.

DATES: The public meeting is scheduled for Tuesday, March 15, 2005 from 10:30 a.m. to 12 p.m.

ADDRESSES: The public meeting will be held in the Conference Room 1A 002, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. Documents related to the 26th Session of CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/web/index_en.asp.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROMs, and hand-or courier-delivered items: Send to the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington DC 20730. All Comments received must include the Agency name and docket number 04–050N.

All comments submitted in response to this notice, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FOR FURTHER INFORMATION ABOUT THE 26TH SESSION OF THE CCMAS CONTACT: U.S. Delegate, Dr. Gregory Diachenko, Director, Division of Chemistry Research and Environmental Review, Center for Food Safety and Applied Nutrition, FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740. Phone (301) 436–1898; Fax (301) 436–2364, E-mail: *Gregory.diachenko@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Syed Amjad Ali, International Issues Analyst, U. S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Phone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. Gregory Diachenko, Director, Division of Chemistry Research and Environmental Review, FDA, at telephone (301) 436–1898; Fax (301) 436–2364.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international standard-setting organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Committee on Methods of Analysis and Sampling (CCMAS) performs multiple functions; defines criteria appropriate for Codex Methods of Analysis and Sampling; specifies reference methods of analysis and sampling; endorses methods of analysis and sampling proposed by Codex Committees; elaborates sampling plans; and considers specific sampling and analysis problems. The Committee is chaired by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 26th Session of CCMAS will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex Committees
2. Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis
3. Fitness-for-Purpose Approach (for inclusion in the Proposed Draft

Guidelines for Evaluating Acceptable Methods of Analysis)
4. Proposed Draft Guidelines for Settling Disputes on Analytical (Test) Results
5. Use of Analytical Results (For inclusion in the Procedural Manual)
6. Further Review of Analytical Terminology for Codex Use (For inclusion in the Procedural Manual)
7. Criteria for Methods of analysis for foods derived from biotechnology
8. Methods of analysis for dioxins and PCBs

Each issue listed will be fully described in documents distributed, or to be distributed, by the Hungarian Secretariat to the Meeting. Members of the public may access copies of these documents *http://www.codexalimentarius.net/web/index_en.asp.*

Public Meeting

At the March 15, 2005 public meeting, these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate, for the 26th Session of the CCMAS, Dr. Gregory Diachenko (*See* **ADDRESSES**). Written comments should state that they relate to activities of the 26th Session of the CCMAS.

Additional Public Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005NoticesIndex/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meeting, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on January 25, 2005.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 05–1894 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on February 17, 2005 starting at 9 a.m. at the Mid-Oregon Federal Credit Union Conference Room on 1386 NE Cushing (near the corner of 27th and Neff), Bend, Oregon. Agenda items will include an update of litigation, a briefing on the new planning rule, subbasin planning, Upper Deschutes Resource Management Plan, rechartering, Mt. Hood NF working group charter, Northwest Forest Plan monitoring, and an update of the B and B project. The remainder of the day will include info sharing and a Public Forum from 12:30 p.m. till 1 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, PO Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor, Designated Forest Official.

[FR Doc. 05–2037 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals are due by February 14, 2005, to be considered at this meeting.

DATES: The meeting will be held February 18, 2005, from 6–9 p.m. and will continue on February 19, 2005, from 9–12 a.m., if necessary.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327 Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

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 resource projects or other Resource Advisory Committee 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 and individuals who made written requests by February 14, 2005, will have the opportunity to address the Council at those sessions.

Dated: January 21, 2005.

Patricia M. O'Connor,

District Ranger, Yakutat Ranger District, Tongass National Forest.

[FR Doc. 05–1871 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 1 p.m. until 5:15 p.m. (or until the conclusion of public testimony) on Friday, March 4, and from 8 a.m. until 2 p.m., Saturday, March 5, 2005, in Petersburg, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 1 p.m. on Friday, March 4, through 2 p.m., Saturday, March 5, 2005.

ADDRESSES: The meeting will be held at the Petersburg Lutheran Church Holy Cross House, 407 Fram Street, Petersburg, Alaska.

FOR FURTHER INFORMATION CONTACT: Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us.* Toll-free conference calling is available for this meeting; please call or e-mail for specific information. For further information on RAC history, operations, and the application process, a Web site is available at *http://www.fs.fed.us/payments.* Once in the website, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

SUPPLEMENTARY INFORMATION: This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393), particularly proposals that were of high interest to the committee, but lacked enough information for the committee to act. New information may be introduced concerning these proposals. New proposals (initial reading) may be discussed at this meeting. The committee may make recommendations for project funding at this meeting. A field trip to review proposals proximate to the Petersburg, Alaska, area may take place. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: January 24, 2005.

Larry Dunham,

Acting Forest Supervisor.

[FR Doc. 05–1940 Filed 2–1–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of certain antidumping and countervailing duty orders. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers these same orders.

EFFECTIVE DATE: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4340, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the second sunset reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–403–801	731–TA–454	Norway	Fresh & Chilled Atlantic Salmon.
C–403–802	701–TA–302	Norway	Fresh & Chilled Atlantic Salmon.
A–580–807	731–TA–459	Korea	Polyethylene Terephthalate (PET) Film.
A–428–807	731–TA–465	Germany	Sodium Thiosulfate.
A–570–805	731–TA–466	China	Sodium Thiosulfate.
A–412–805	731–TA–468	United Kingdom	Sodium Thiosulfate.
A–588–702	731–TA–376	Japan	Stainless Steel Butt-Weld Pipe Fittings.
A–580–813	731–TA–563	Korea	Stainless Steel Butt-Weld Pipe Fittings.
A–583–816	731–TA–564	Taiwan	Stainless Steel Butt-Weld Pipe Fittings.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*.''

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset Web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: January 26, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–1943 Filed 2–1–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the petitioner in this proceeding, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on pure magnesium from Canada. Due to the recent completion of NAFTA panel review of the final remand redetermination made by the Department concerning the full sunset review of that order, the order was revoked effective August 1, 2000. Therefore, we are rescinding the ongoing administrative review covering the period August 1, 2003, through July 31, 2004.

EFFECTIVE DATES: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Scott Holland, 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) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39390) an antidumping duty order on pure magnesium from Canada. On August 3, 2004, the Department published a notice in the **Federal Register** of the opportunity for interested parties to request an administrative review of the antidumping duty order on pure magnesium from Canada. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 30, 2004, and in accordance with 19 CFR 351.213(b)(1) of the Department's regulations, the Department received a timely request for review of the antidumping duty order from U.S. Magnesium LLC, an interested party in these proceedings, on imports of pure magnesium from Canada by Norsk Hydro Canada Inc., and Magnola Metallurgy Inc. (collectively, ''the respondents'').

We published a notice of initiation of the antidumping duty administrative review on September 22, 2004, with respect to the respondents in accordance with 19 CFR 351.221(b)(1) of the Department's regulations. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004). The period of review is August 1, 2003, through July 31, 2004.

On November 19, 2004, the NAFTA Secretariat published in the **Federal Register** a notice of completion of panel review of the final remand redetermination made by the Department concerning the full sunset review of the antidumping duty order on pure magnesium from Canada. *See North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review*, 69 FR 67703 (November 19, 2004).

On December 7, 2004, pursuant to the panel's decision, the Department published a notice in the **Federal Register** of amended final results of its full sunset review and revocation of the antidumping duty order on pure magnesium from Canada effective August 1, 2000, the effective date of the original full sunset review, in accordance with 516A(g)(5)(C) of the Tariff Act of 1930, as amended, (''the Act''). *See Pure Magnesium from Canada; Notice of NAFTA Binational Panel's Final Decision, Amended Final Results of Full Sunset Review and Revocation of Antidumping Duty Order*, 69 FR 70649 (December 7, 2004).

Rescission of Antidumping Administrative Review

As the result of the revocation of the antidumping duty order effective August 1, 2000, we are hereby rescinding the instant administrative review on pure magnesium from Canada, the only ongoing review of this order.

Instructions to U.S. Customs and Border Protection

Pursuant to sections 751(d)(2) and 751(d)(3) of the Act, and 351.222 of the Department's regulations, the Department has instructed U.S. Customs and Border Protection (''CBP'') to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after August 1, 2000, the effective date of the revocation of the order. The Department has further instructed CBP to refund with interest any estimated duties collected with respect to unliquidated entries of pure magnesium entered, or withdrawn from warehouse, for consumption on or after August 1, 2000, in accordance with section 778 of the Act.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Act, as amended and 19 CFR 351.213(d)(4).

Dated: January 26, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–1957 Filed 2–1–05; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed withdrawal of staff interpretation.

SUMMARY: Section 4d(a)(2) of the Commodity Exchange Act (''CEA'') and related Commission regulations (hereinafter collectively referred to as ''segregation requirements'') require that, among other things, all funds deposited with a futures commission merchant (''FCM'') to purchase, margin, guarantee, or secure futures or commodity options transactions and all accruals thereon (''customer funds'' or ''customer margin'') be accounted for separately, be held for the benefit of customers and deposited under an account name that clearly identifies them as such, and not be commingled with the FCM's own funds.[1] Further, the Division of Clearing and Intermediary Oversight (''Division'') has construed these provisions to prohibit any impediments or restrictions upon an FCM's ability to obtain immediate access to customer funds.

In 1984, the Division of Trading and Markets (''T&M,'' predecessor to the Division) issued an interpretation, Financial and Segregation Interpretation No. 10 (''Interpretation No. 10''), to address whether, and the circumstances under which, the use of bank custodial accounts (otherwise known as ''safekeeping accounts'' or ''third-party custodial accounts'') to maintain customer funds would be consistent with the segregation requirements of the CEA.[2] At the time, investment companies registered under the Investment Company Act of 1940 (the ''Investment Company Act'') (''RICs'') were generally barred from using any FCM or futures clearinghouse as a custodian of fund assets and, thus, third-party custodial accounts were the only permissible means available to RICs to use the risk management tools available through the futures markets.[3] With Interpretation No. 10, T&M took the position that customer funds held in third-party custodial accounts could be deemed properly segregated for purposes of Section 4d(a)(2), provided that certain terms and conditions designed to ensure FCMs' immediate and unimpeded access to the funds were met.

Today, RICs are, for the most part, no longer prohibited from depositing customer margin directly with FCMs and thus may engage in futures trading generally in the same manner as other futures customers. This, coupled with the fact that third-party custodial accounts may present not insignificant regulatory concerns, as well as costs and burdens for market participants, leads the Division to believe that Interpretation No. 10 is no longer necessary or justified, except in certain limited circumstances. In this notice, the Division is inviting comments concerning Interpretation No. 10 and specifically, whether Interpretation No. 10 should be withdrawn.

DATES: Comments must be received on or before April 4, 2005.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, by e-mail to *secretary@cftc.gov,* or electronically by accessing *http://www.regulations.gov.* Reference should be made to ''Proposed Withdrawal of Interpretation No. 10.''

FOR FURTHER INFORMATION CONTACT: Carlene S. Kim, Senior Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5613.

SUPPLEMENTAL INFORMATION:

I. Interpretation No. 10

Section 4d(a)(2) of the CEA and related Commission regulations require that, among other things, all funds deposited with an FCM to purchase, margin, guarantee, or secure futures or commodity options transactions and all accruals thereon, be accounted for separately by the FCM and deposited under an account name that clearly identifies them as such, not be commingled with the FCM's own funds, and be held for the benefit of customers.[4] The segregation requirements are intended to prevent an FCM from using customer property to margin the trades of other customers or of the FCM itself. Further, the Division has interpreted the segregation requirements to preclude any impediments or restrictions on the FCM's ability to obtain the immediate access to customer funds.[5] The immediate and unfettered access requirement avoids potential delay or interruption in securing required margin payments that, in times of significant market disruption or otherwise, could magnify the impact of such market

[1] 7 U.S.C. 6d(a)(2). The Commission segregation requirements are set forth in Regulations 1.20–1.30, 132 and 1.36 [17 CFR 1.20–1.30, 1.32 and 1.36].

[2] *See* Financial and Segregation Interpretation No. 10, Treatment of Funds Deposited in Safekeeping Accounts, Comm. Fut. L. Rep. (CCH) ¶ 7120 (May 23, 1984).

[3] Until immediately prior to the issuance of Interpretation No. 10, the Department of Labor (''DOL'') viewed customer margin as client assets for purposes of the custody requirements and certain other fiduciary provisions of the Employee Retirement Income Security Act of 1974 (''ERISA'') [29 U.S.C. 1001–1461], requiring separate safekeeping of such assets. Since then, and currently, DOL subscribes to the view that such assets are not client assets for purposes of ERISA.

[4] U.S.C. 6(d)(a)2).

[5] *See also,* note 16, Interpretation No. 10, citing Administrative Determination No. 29 of the Commodity Exchange Authority, the Commission's predecessor agency, dated September 28, 1937, which stated in pertinent part that ''the deposit, by a futures commission merchant, of customer funds * * * under conditions whereby such funds would not be subject to withdrawal upon demand would be repugnant to the spirit and purpose of the Commodity Exchange Act. All funds deposited in a bank should in all cases be subject to withdrawal on demand.''

disruption and impair the liquidity of other FCMs and clearinghouses.

At the time that T&M issued Interpretation No. 10, institutional participation in the futures market was on the rise. Certain of these institutional participants—including pension plans and RICs—sought to use bank custodial accounts to hold margin under circumstances that raised questions about whether the accounts would be deemed properly segregated for purposes of Section 4d(a)(2) of the CEA. For example, RICs were prohibited from using FCMs and futures clearinghouses as custodians of their assets.[6] They were, however, permitted (but not required) to maintain a bank custodial account under the name of an FCM to hold initial margin under an arrangement whereby the FCM would be permitted to dispose of the funds in the account upon default by the investment company in making a required margin payment.[7]

In view of the fact that RICs were barred from depositing customer funds directly with an FCM or a futures clearinghouse, and that third-party custodial arrangements represented their sole means of utilizing the risk management tools offered by the futures markets, T&M issued Interpretation No. 10 to allow third-party custodial accounts to be deemed properly segregated within the meaning of Section 4d(a)(2) of the CEA, under conditions designed to ensure that FCMs have immediate and unfettered access to customer funds in the third-party custodial accounts.[8] Specifically, an FCM could consider funds maintained in a third-party bank custodial account to be properly segregated if: (i) The account were maintained in the name of the FCM carrying the account, for the benefit of the customer; (ii) the FCM could liquidate open positions if the account became undermargined or went into deficit, without obtaining permission from a third party custodian of the account; (iii) the FCM could withdraw funds from the account upon demand with no right of the customer (or its fiduciary) to stop, interrupt or otherwise interfere with such withdrawal and the customer (and its fiduciary) could not withdraw or otherwise have access to the funds in the account except through the FCM; (iv) the account would not be located in a bank which was an affiliate or fiduciary of the customer; and (v) any release of funds to the customer from the account would be preceded by a notice to and consent of the carrying FCM.

II. Developments Concerning Interpretation No. 10

Today RICs may directly deposit customer margin with FCMs and futures clearing houses and thus participate in futures trading generally in the same manner as other futures customers. In 1996 the SEC adopted rule 17f–6, which permits, but does not require a RIC to maintain its assets with an FCM in connection with futures transactions effected on U.S. and foreign exchanges, provided that the FCM is not an affiliate of the RIC.[9] As a result, Interpretation No. 10 is no longer necessary in most cases for RICs to participate in the futures market.

This, considered together with the potentially significant supervisory risks associated with the use of third-party accounts in connection with futures trading, make it necessary and appropriate to consider the withdrawal of Interpretation No. 10. Specifically, third-party custodial accounts continue to raise concerns about potential systemic liquidity risks which could result from any potential diversion of FCM capital to cover undermargined customer accounts, which would otherwise be available for use in the marketplace. These risks may be heightened in times of market volatility when liquidity is most critical. In addition, initial margin requirements typically rise during such periods, creating additional stress on FCM resources.

In addition, the holding of customer margin in any such account has and continues to present both some uncertainty as to the treatment of funds in the event of an FCM insolvency,[10] and some potential for funds to be inadvertently released from the account without the prior knowledge or consent of the FCM.[11] For these reasons, the Division solicits comments on whether Interpretation No. 10 should be withdrawn, except in the following limited circumstance. Specifically, an FCM would be permitted to rely on Interpretation No. 10 to the extent that it is not eligible to hold RIC assets under SEC rule 17f–6.[12] The Division believes that retaining the application of Interpretation No. 10 in this limited circumstance would be appropriate because to do otherwise would require a RIC that clears through an FCM that is its affiliate (or an affiliate of its adviser) to alter existing clearing arrangements with potentially undue disruption and cost.

The Division notes that the withdrawal of Interpretation No. 10 would not forbid the use of such accounts but, rather, would mean that funds in such accounts would not be deemed properly segregated under Section 4d(a)(2) and therefore could not be included in an FCM's required daily computation of total customer amount of customer funds on deposit in segregated accounts.

III. Request for Comments.

The Division is requesting comments on whether withdrawal of Interpretation No. 10 would have any adverse impact on institutional customers, such as pension plans or RICs, or their ability to participate in the futures market and

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[6] *See* Section 17(f) of the Investment Company Act, 15 U.S.C. 80a–17(f). At that time (but no longer), under Section 17(f) and related rules RICs were generally permitted to maintain their assets only in the custody of a bank, a member of a national securities exchange, or a national securities depository. FCMs and futures clearinghouses did not fall within one of these categories. In this regard, the SEC did not adopt the position taken by DOL, which did not view customer margin as client assets for purposes of the custody requirements and certain other fiduciary provisions of the ERISA.

[7] This relief was available pursuant to SEC staff no-action letters and exemptive orders. Other conditions to the relief required that prior to directing any disposition of funds, the FCM represent that all conditions precedent to its right to direct disposition have been satisfied. In addition, the RIC, when it had the right to receive variation payment from an FCM, was required to promptly demand such payment. *See, e.g.,* Prudential-Bache IncomeVertible Plus Fund, Inc., SEC No-Action Letter (Nov. 20, 1985), available at 1985 SEC No-Act. LEXIS 2782.

[8] While specifically directed to the third-party accounts of pension plans and RICs, the views expressed in the interpretation applied equally to any other customer of an FCM (*e.g.,* an insurance company). See Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, note 1.

[9] Investment Company Act Rule 17f–6(b)(3) [17 CFR 270.17f–6(b)(3)]. Specifically, a RIC may not place fund assets with an FCM that is an affiliate of the fund or its adviser. Other conditions in the rule provide that the manner in which an FCM maintains fund assets must be governed by a written contract and any gains on fund transactions must be maintained with the carrying FCM only in de minimis amounts.

[10] The Division's position is that third-party custodial accounts are subject to the U.S. Bankruptcy Code and applicable provision in the CEA, which provide that customer assets relating to futures transactions generally have priority over other creditors' claims, and are subject to distribution based on each customer's pro data share of the available customer property. 11 U.S.C. 766; Commission rule 190.18 [17 CFR 190.08]. However, this issue has not been judicially determined.

[11] *See also* Staff Advisory entitled ''Responsibilities of Futures Commission Merchants and Relevant Depositories with Respect to Third Party Custodial Accounts'' (July 25, 1996) (''Advisory)'', available at *http://www.cftc.gov/opa/press96/opa37–96.htm.* The Advisory addressed certain third-party custodial practices and arrangements that appeared to be, or could be implemented in a manner that is, inconsistent with the terms and conditions of Interpretation No. 10.

[12] As discussed above, under Rule 17f–6, a RIC may not deposit fund assets with any FCM that is an affiliate of the fund or its adviser.

whether there are any legal or prudential considerations that support the use by institutional customers of third-party custodial accounts in effecting futures transactions. In addition, the Division is seeking comments on the costs and expenses incurred by FCMs, including financing and potential opportunity costs, in connection with maintaining third-party accounts relative to regular customer accounts. Finally, the Division would expect that any withdrawal of Interpretation No. 10 would be made effective not less than six months following the publication of a final notice. The Division seeks comment on whether the six-month time period is appropriate and sufficient for FCMs and banks to make the necessary adjustments with respect to third-party custodial arrangements.

Dated: January 27, 2005.

By the Division of Clearing and Intermediary Oversight.

James L. Carley,

Director, Division of Clearing and Intermediary Oversight.

[FR Doc. 05–1907 Filed 2–1–05; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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. sec. 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Learn and Serve America (hereinafter ''LSA'') Grant Applications. These applications are used by current and prospective grantees to apply for funds to support K–12 School-Based Formula, Competitive and Indian Tribe and Territory Set-aside programs; Community-Based programs; and Higher Education programs. Completion of the grant application is required to be considered for or obtain grant funding support from LSA.

Copies of the information collection requests can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 4, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Mr. Mark Abbott at *mabbott@cns.gov.*

(2) By fax to: (202) 565–2787, Attention Mark Abbott.

(3) By mail sent to: Corporation for National and Community Service, Learn and Serve America, 9th Floor, Attention Mark Abbott, 1201 New York Avenue, NW, Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Abbott, (202) 606–5000, ext. 120.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• 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 expected 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).

I. Background

The Learn and Serve America Grant Application is completed by applicant organizations interested in managing a service-learning program directly or administering grant funds to other eligible organizations to manage service-learning programs. The application is completed electronically using eGrants, the Corporation's Web-based grants management system.

The Corporation seeks to renew and revise the current applications. When revised, the application will update eGrants instructions to reflect the new, Web-based user interface for eGrants; shorten background information on Learn and Serve America and clarify guidance on development of program performance measures. The application will otherwise be used in the same manner as the existing application. The Corporation will continue using the current application until the revised application is approved by OMB.

II. Current Action

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Grant Applications.

OMB Numbers: 3045–0045 for Learn and Serve America School and Community-Based Application Instructions and 3045–0046 for Learn and Serve America Higher Education Instructions.

Agency Number: SF 424–NSSC.

Affected Public: Current/prospective recipients of Learn and Serve America Grants.

Total Respondents: 600. (400 for 3045–0045 and 200 for 3045–0046)

Frequency: Annually, with exceptions.

Average Time Per Response: 12 hours for first time respondents and 5 hours for revisions (3045–0045 and –0046); 6 hours for Continuation grantees and 2 hours for revisions.

Estimated Total Burden Hours: 10,200 New grantees (2045–0045 & 0046); 1200 Total Burden Hours for Continuing grantees.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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 will also become a matter of public record.

Dated: January 27, 2005.

Mark Abbott,

Associate Director for Grants Management, Learn and Serve America.

[FR Doc. 05–1932 Filed 2–1–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

General Solicitation of Comments From the General Public on Review of the National Information Assurance Partnership (NIAP)

AGENCY: Office of the Secretary, DOD, National Cyber Security Division, DHS.

ACTION: Notice for general solicitation of comments.

SUMMARY: The National Strategy to Secure Cyberspace, issued by the Office of the President in February of 2003 required the Federal Government to conduct a comprehensive review of the National Information Assurance Partnership (NIAP) to determine the extent to which it is adequately addressing the continuing problem of security flaws in commercial software products. The Department of Defense (DoD) and the Department of Homeland Security (DHS) were tasked with conducting the review on behalf of the Federal government. In an effort to ensure a comprehensive review of the subject, DoD and DHS seek public comment on the issues that should be considered before completing this review.

DATES: Comments must be received on or before March 4, 2005.

ADDRESSES: Submit comments electronically to DOD/DHS at *NIAPReview@ida.org.* Send written comments to: The Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA 22311, Attention: NIAP Review.

FOR FURTHER INFORMATION CONTACT: Dr. Greg Larsen, Institute for Defense Analyses, (703) 845–6661, e-mail: *glarsen@ida.org.*

SUPPLEMENTARY INFORMATION: During this review, DoD and DHS considered the results of current policy and practices, the general efficacy and adequacy of current capabilities, and the expectations of stakeholders. In addition, the scope of the review was extended beyond NIAP security testing, evaluation and assessment of information technology (IT) products to include the policy support infrastructure and integration into system development acquisition processes.

NIAP is a U.S. Government initiative originated to meet the security testing needs of both IT consumers and producers. NIAP is collaboration between the National Institute of Standards and Technology (NIST) and the National Security Agency (NSA) in fulfilling their respective responsibilities under Pub. L. 100–235 (Computer Security Act of 1987). To obtain more information on NIAP please go to: *http://niap.nist.gov/.*

To obtain a copy of The National Strategy to Secure Cyberspace please go to: *http://www.dhs.gov/interweb/assetlibrary/National_Cyberspace_Strategy,pdf.*

January 28, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 05–1912 Filed 2–1–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Proposed Wharf Improvements and Fill at Apra Harbor, GU

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Port Authority of Guam and the U.S. Army Corps of Engineers hereby give notice of intent to prepare a Environmental Impact Statement (EIS) for proposed wharf improvements and fill at Apra Harbor, Guam.

Under a Federal grant from the U.S. Department of Commerce Economic Development Administration, the Port Authority of Guam is proposing modifications to Apra Harbor for the purpose of improving maritime access and services to the island of Guam. The harbor is in need of improvements to meet anticipated future demands of the island's commercial port operations by providing additional cargo container storage area, and berthing facilities capable of accommodating the newest generation of large deep draft container vessels, and cruise ships. The proposed improvements would also provide contingency berthing facilities for U.S. Navy military vessels.

The U.S. Army Corps of Engineers will be the lead agency in preparing the EIS. The EIS will provide an analysis of potential impacts to the environment from the proposed modifications to Apra Harbor, in compliance with NEPA and CEQ regulations.

DATES: In order to be considered in the draft EIS, comments and suggestions should be received no later than June 1, 2005.

ADDRESSES: Send written comments to U.S. Army Corps of Engineers, Honolulu District, ATTN: Mr. James Hatashima, Project Manager, Civil and Public Works Branch (CEPOH–PP–C), Rm. 312, Bldg. 230, Fort Shafter, HI 96858–5440.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. James Hatashima, Phone: (808) 438–2264, e-mail: *james.k.hatashima@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Apra Harbor is the commercial hub of Guam, handling both containerized and conventional cargo from around the world. The harbor is located near the center of the western coast of Guam. It is a natural harbor, protected by Orote Peninsula to the south and Cabras Island to the north. Proposed modifications would occur within outer Apra Harbor along the presently undeveloped, southern face of the Glass Breakwater, located west of Wharf F–2 on Cabras Island. The proposed improvements would provide additional berthing area and increased landside capacity for commercial port cargo storage and handling operations.

Proposed Action—Harbor improvements under consideration include: (1) Construction of a new 1,500-foot wharf to the east of Hotel Wharf. Improvements may include construction of a cellular sheet pile bulkhead, deposition of approximately 950,000 cubic yards of fill material in Apra Harbor, and construction of mechanized cargo container handling facilities; (2) Placement of approximately 500,000 cubic yards of fill over 18 acres of submerged lands in three areas along the east end of the Glass Breakwater. Improvements may also include construction of rock revetments, and construction of cargo container storage yard facilities; (3) Dredging of submerged lands to depths of 55 to 60 feet in waters adjacent to the proposed 1,500-foot wharf to accommodate larger deep draft commercial and military vessels.

Project Alternatives—Alternatives to be considered include: (1) ''No Action''. No improvements would be undertaken and existing port facilities within Apra Harbor would remain unchanged; (2) Alternate designs, and construction methods; (3) Alternate sources and types of fill material (4) Dredge material disposal alternatives.

To provide a forum for the public to obtain information on the project, the

Port Authority of Guam and the U.S. Army Corps of Engineers will hold a public scooping meeting on or about February 2005. The purpose of the scoping meeting is to present information and solicit public input, in the form of oral and written comments, on the proposed action and alternatives under consideration. Interested agencies, organizations, and individuals are invited to attend and participate in the scoping meeting to help determine the range of issues and alternatives to be addressed in the EIS. The date, time, and location of the scoping meeting will be publicly announced.

The draft EIS is anticipated to be available for public review in November 2005, and a public meeting will beheld after publication of the draft EIS. The date, time, and location of the meeting will be publicly announced.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–1914 Filed 2–1–05; 8:45 am]

BILLING CODE 3710–N$–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army of Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: February 24, 2005.

Location: The Washington Court Hotel, 525 New Jersey Avenue NW., Washington, DC 20001–1527, (1–202–628–2100).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also consider its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CEMP–POD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–1934.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–1913 Filed 2–1–05; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 4, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 27, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study of No Child Left Behind Flexibility Provisions (previous title—Flexing Federal Dollars Study.)

Frequency: One time.

Affected Public: State, local, or tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 640.

Burden Hours: 356.

Abstract: To evaluate how school districts are using the provisions for enhanced flexibility over the use of Federal education funds authorized under the No Child Left Behind Act.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2640. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–398 Filed 2–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required

by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 4, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 27, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Evaluation of the Impact of Supplemental Literacy Programs in Freshman Academies.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 40.

Burden Hours: 2,600.

Abstract: The grant application package establishes requirements, priorities, definitions and selection criteria, and solicits proposals from local education agencies for a special grant competition under the Smaller Learning Communities program to expand or create smaller learning communities and participate in a national research evaluation of supplemental reading programs in freshman academies.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2668. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–399 Filed 2–1–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection package with the Office of Management and Budget (OMB) concerning collection of human resource and labor relations information from major DOE contractors for contract management, administration, and cost control. Comments are invited on: (a) Whether the extended 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, including the validity of the methodology and assumptions used; (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.

DATES: Comments regarding this proposed information collection must be received on or before April 4, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Stephanie Weakley, ME–631, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1615; or by fax at 202/287–1656 or by e-mail at *stephanie.weakley@hq.doe.gov.* and to: Sharon A. Evelin, Acting Director, IM–11/Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 10585–1290, or by fax at 301–903–9061 or by e-mail at *sharon.evelin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Stephanie Weakley at the address listed above.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.:* 1910–0600; (2) *Package Title:* Industrial Relations; (3) *Type of Review:* Renewal; (4) *Purpose:* This information is required for management oversight for DOE's Facilities Management Contractors and to ensure that the programmatic and administrative management requirements of the contract are managed efficiently and effectively; (5) *Respondents:* 447; (6) *Estimated Number of Burden Hours:* 8,008.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Issued in Washington, DC on January 26, 2005.

Sharon A. Evelin,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 05–1889 Filed 2–1–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. TR–06]

2006 Transmission Rate Case; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTIONS: Notice of 2006 Transmission Rate Case.

SUMMARY: BPA File No. TR–06. BPA requests that all comments and documents intended to become part of the Official Records in this proceeding contain the file number designation TR–06.

BPA's existing transmission and ancillary services rates expire September 30, 2005. BPA will establish transmission and ancillary service rates in this proceeding for the period from October 2005 through September 2007, fiscal years (''FY'') 2006 and 2007 (''2006–2007 Rate Period'').

BPA's Transmission Business Line (''TBL'') held several public meetings with customers over the period July through September 2004 to discuss transmission costs, revenues, and rate design issues for the 2006–2007 Rate Period. The customers expressed interest in meeting with TBL to develop a settlement for the 2006–2007 Rate Period. Continued meetings between October and early December resulted in a Settlement Agreement. TBL's initial rate proposal (''Initial Proposal'') reflects the terms of the Settlement Agreement.

DATES: Persons wishing to become formal parties to the proceeding must notify BPA in writing of their intention to do so by the requirements stated in this Notice. Petitions to intervene must be received by BPA no later than 4:30 p.m., Pacific Time, on February 14, 2005.

The rate adjustment proceeding will begin with a pre-hearing conference at 9 a.m., Pacific Time, on February 16, 2005, in Portland, Oregon, at the address stated below. Due to increased security, attendees should allow additional time for entry into the building. Attendees will need a photo ID and will need to sign in at the security desk.

Written comments by non-party participants must be received by March 16, 2005, to be considered in the Record of Decision (''ROD'').

ADDRESSES:

1. Petitions to intervene should be directed to Jonathan Shardlow, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon, 97232. In addition, a copy of the petition must be served concurrently on BPA's General Counsel and directed to Charles H. Combs—LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232 (*see* Part III, A for more information).

2. Written comments by non-party participants should be submitted to Rate Case, TBL Communications—T–Ditt2, Bonneville Power Administration, PO Box 491, Vancouver, WA 98666. You also may e-mail your comments to: *tblfeedback@bpa.gov.*

3. The pre-hearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon, at 9 a.m., Pacific Time, on February 16, 2005. Compact discs (''CD'') containing the Initial Proposal documents, in PDF format, will be provided to parties at the pre-hearing conference. The Settlement Agreement, studies and documentation also will be available on BPA's Web site at *http://www.transmission.bpa.gov/Business/Rates_and_Tariff/2006RateCase.cfm,* and may be viewed at BPA's Public Reference Room, 1st floor, 905 NE 11th Ave., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Information also may be obtained from Debbie Stout, TBL Communications—T–Ditt2, Bonneville Power Administration, PO Box 491, Vancouver, WA 98666; by phone at (360) 418–8995 or toll free at 1–888–276–7790; or via e-mail to *dastout@bpa.gov.*

Responsible Official: Mr. Dennis Metcalf, Transmission Rate Case Manager, is the official responsible for the development of BPA's transmission and ancillary service rates.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, publication of notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (1986) (''Procedures''). These Procedures implement the statutory Section 7(i) requirements. This rate proceeding will be governed by Section 1010.9 of the Procedures providing for a general rate proceeding, as modified by the Hearing Officer at the pre-hearing conference. However, BPA will not hold any field hearings to provide for non-party participant oral comments. Section 1010.7 of the Procedures prohibits ex parte communications. BPA imposed ex parte limitations beginning January 17, 2005.

The Bonneville Project Act, 16 U.S.C. 832; the Flood Control Act of 1944, 16 U.S.C. 825s; the Federal Columbia River Transmission System Act, 16 U.S.C. 838; the Northwest Power Act, 16 U.S.C. 839; and the Federal Power Act, 16 U.S.C. 824k(i)(1)(B)(ii) provide guidance regarding BPA's ratemaking. With regard to transmission rates, the Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of transmitting electric power, including amortization of the Federal investment over a reasonable period of years, and the other costs and expenses incurred by the Administrator. The Federal Columbia Transmission System Act requires that the costs of the Federal Columbia River Transmission System be equitably allocated between Federal and non-Federal power utilizing the system. In addition, rates for Federal Energy Regulatory Commission (''FERC'' or ''Commission'')-ordered transmission service shall be at rates and charges that permit the recovery of all costs incurred in connection with the transmission service and necessary associated services.

A proposed schedule for the formal hearing is stated below. A final schedule will be established by the Hearing Officer at the pre-hearing conference.

February 14, 2005, Petitions to Intervene
February 16, 2005, Pre-hearing Conference and Filing of BPA Direct Case
February 22, 2005, Clarification
February 24, 2005, Objections to Initial Proposal
February 28, 2005, Scheduling Conference
March 16, 2005, Participant Comments Due
June 20, 2005, Final ROD—Final Studies

Part II—Purpose and Scope of Hearing

A. Key Components

1. Overview

BPA is committed to marketing its power and transmission services separately in a manner that is modeled after the regulatory initiatives to promote competition in wholesale power markets that were adopted by the Commission in 1996. The Commission's initiatives in Orders 888 [1] and 889 [2] directed public utilities regulated under the Federal Power Act to separate their power merchant functions from their transmission reliability functions; unbundle transmission and ancillary services from wholesale power services; and set separate rates for wholesale generation, transmission, and ancillary services. Although BPA is not required by statute to follow the Commission's regulatory directives promoting competition and open access transmission service, BPA has elected to separate its power and transmission operations and unbundle its rates in a manner consistent with the directives concerning open access transmission service. Accordingly, in 1996 BPA established separate business lines: BPA's Power Business Line (''PBL'') which performs BPA's wholesale merchant functions, and BPA's TBL which performs BPA's transmission system operations and reliability functions. BPA develops its transmission rates in separate proceedings from its power rates.

2. PBL as a Party to the Rate Case

Because BPA has separated its power and transmission functions, sets its power and transmission rates in separate proceedings, and PBL is a TBL transmission customer, it is appropriate that the PBL be a party to the transmission rate proceeding. Accordingly, PBL will be considered a party to the Transmission Rate Case for all purposes under the BPA Procedures. The PBL may file testimony and briefs as a party and will be entitled to all other procedural rights of a party. In particular, the PBL shall be considered a party for purposes of ex parte communications.

3. Two-Year Transmission Rate Period

The rate period for the rates proposed in this transmission rate adjustment proceeding is two years, the 2006–2007 Rate Period. A two-year rate period balances the need for a short rate period to limit revenue and cost risks with the significant resource and time requirements needed to plan and carry out a rate case.

4. Settlement Agreement

TBL and most of its customers are parties to a Settlement Agreement that provides for TBL to submit an initial transmission rate proposal that incorporates the provisions of the Settlement Agreement. The Settlement Agreement specifies rate levels for BPA's transmission and ancillary service rates during the 2006–2007 Rate Period, as provided in Attachment 1 to the Agreement and reflected in the proposed Rate Schedules. Other major provisions of the Settlement Agreement include:

a. Payment by TBL to PBL of $1.5 million per year for redispatch services described in a revised Attachment K to BPA's Open Access Transmission Tariff (''OATT''). The Settlement Agreement provides that TBL agrees to file with the Commission, and the signatories to the Settlement Agreement agree not to challenge, the revised Attachment K. BPA will file the revised Attachment K as a proposed amendment to BPA's OATT to be effective as of October 1, 2005. Such filing will not be part of this rate proceeding;

b. Network Integration rate schedule language limiting the amount of Customer-Served Load (''CSL''), and a TBL commitment to work with customers prior to October 2011, the date on which TBL intends to eliminate CSL, to determine whether a transition mechanism is appropriate for NT customers with CSL;

c. TBL commitment, effective on the date TBL signs the Settlement Agreement, to apply the methodologies in FERC Order 2003–A for determining, funding, and allocating the costs of facilities associated with generator interconnections, and revisions to the Advance Funding (''AF'') rate;

d. PBL agreement to charge federal power customers that are served over non-federal facilities (''General Transfer Agreement'' or ''GTA'' service), which PBL pays for, the same low-voltage delivery charge applicable to customers served over federal Delivery facilities during the 2006–2007 Rate Period. For the period beginning in FY 2008, the GTA delivery charge will be determined in the power rate case. PBL also agrees to hold a rates workshop or other public forum in advance of the power rate case;

e. TBL commitment to work with customers in the Business Practice Forum to develop a business practice for self-supply of Generation Supplied Reactive from qualifying non-federal generators;

f. Failure to Comply Penalty Charge revisions, which include a requirement to curtail actual use;

g. TBL's expected use of $15 million in each year of the 2006–2007 Rate Period of TBL's financial reserves as a funding source for transmission capital programs, and the reflection of such use in the calculation and presentation of the transmission revenue requirement;

h. Rate schedule revisions that would bill hourly non-firm transmission service based on reservations instead of on schedules, when TBL has systems in place to do so;

i. TBL commitment to work to develop a conditional firm transmission product, and to conduct an expedited rate case and make filings if necessary to implement the product;

j. Formula rates to adjust for (1) FY 2007 PBL generation inputs for Regulation and Frequency Response, Operating Reserves, and Generation-Supplied Reactive ancillary services, as determined in the next BPA power rate case; (2) TBL payments for non-federal generation-supplied reactive made under FERC-approved rates; and (3) self-supply of generation-supplied reactive. The ASC–06 Regulation and Frequency Response Service rate and the Operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service rates would be adjusted one time, on October 1, 2006. The ASC–06 Reactive Supply and Voltage Control from Generation Sources Service rate, FPT–06.1 Formula Power Transmission rate, and IR–06 Integration of Resources rate would be calculated on a quarterly basis beginning October 2005; and

k. A provision to be added to the Point-to-Point (''PTP''), Southern Intertie (''IS''), and Montana Intertie (''IM'') rate schedules limiting

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pubic Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,036 (1996).

[2] Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Reg-Preamble, FERC Stats & Regs 1991–96, para. 31,035 (1996).

additional charges for redirecting Long-Term service to Short-Term service.

The Settlement Agreement recognizes the possibility that parties to the 2006 Transmission Rate Case that have not signed the Settlement Agreement may object to the TBL's Initial Proposal. If any party objects to the Initial Proposal, TBL may continue to defend the Initial Proposal or submit a revised proposal. If TBL submits a revised proposal, signatories to the Settlement Agreement may contest any aspect of the revised proposal. If TBL does not revise its Initial Proposal, and the Administrator establishes transmission rates consistent with the Initial Proposal, the signatories have agreed not to challenge approval of the rates by FERC or in any judicial forum.

B. Cost Increases and Revenue Reductions

For nearly a decade, BPA has been increasing its focus on the reliability and availability of the federal transmission system. In 1996, two major transmission outages affected the western United States. Over the past few years, industry deregulation, drought in California and the Northwest, changes in use of the transmission system, constraints in the federal transmission system, and the blackout in the Northeastern United States in 2003, all have contributed to an intensified regional focus on transmission system reliability and availability and their effect on energy costs. In order to maintain transmission system reliability and availability, BPA developed an infrastructure plan with objectives to reinforce the transmission system to continue compliance with national reliability standards; maintain and improve the availability of the transmission system, and remove or manage constraints on the system. In addition, BPA also adopted new tools for evaluating how the main grid transmission system is used.

During the current rate period, TBL has completed and put into service three major components of its infrastructure program, the 500 kV Kangley-Echo Lake line; 500 kV Bell-Grand Coulee line; and modernization of the Celilo Direct Current Terminal. In early FY 2006, a fourth major component, the 500 kV Schultz-Wautoma line, is scheduled to enter service.

Since the 2004 Transmission Rate Case, transmission revenues declined significantly compared to the forecasts. In response, TBL increased efforts to find efficiencies in its programs, deferred some transmission improvements, reduced operating expenditures, and further cut program costs in an attempt to stay within actual revenues. The drop in revenues for FY 2004 and FY 2005 and the resulting deferred operations and maintenance work, together with an increase in costs due to completion of high-priority capital projects, created tension between reliability and cost recovery.

TBL is projecting sales during the 2006–2007 Rate Period similar to the reduced level of sales encountered in the current rate period. The increased costs due to infrastructure projects, and the reduced sales experienced during the current rate period which are forecast to continue in the 2006–2007 Rate Period, are the major contributors to the need for increased rates.

C. Overview of the Public Process

1. Program Level Funding Workshops—Programs in Review

During the spring and summer of 2004, TBL provided an opportunity for public participation and input on TBL program cost levels through the Programs In Review (''PIR'') process. PIR opened on May 3, 2004, with a notification by mail to TBL customers and interested parties. Notices also were published on TBL's external website. Seven public meetings were held around the region during June and July 2004. At these public meetings, TBL discussed issues concerning future capital investments in the transmission system and proposed expense levels for transmission system development, operation, maintenance, and reliability for FY 2006—2007. A total of 147 entities attended the regional meetings. In response to a request from customers for additional information and discussion of specific program level issues, technical meetings were held on August 5 and August 25, 2004. TBL also provided informational materials through direct mailings, written responses to customer letters, e-mailings, and publication of all BPA and customer-generated materials on TBL's external website and through making staff available to answer questions.

The PIR workshops and technical meetings explored customers' and interested parties' views on: (1) Operating and maintaining an aging transmission system;

(2) building and maintaining a business framework in a changing energy industry; (3) building a transmission infrastructure to meet load growth, provide stability for existing contracts, ensure transmission system reliability, and integrate new resources; (4) maintaining a skilled and trained workforce; (5) TBL's access to capital; (6) TBL and corporate staffing and related corporate costs; and (7) operating expenses increasing faster than the rate of inflation. TBL accepted written and oral comments on proposed transmission programs, including expense and capital spending levels, through September 15, 2004. A one-week extension was given for comment on the maintenance program for transmission facilities 115 kV and below, until September 24, 2004.

After consideration of the customer comments, BPA closed out the PIR public process by issuing a decision from the Administrator on transmission spending levels for the proposed rate period. The Initial Proposal is consistent with the results of the Administrator's decision on transmission program spending levels.

2. Transmission Rate Case Customer Workshops

In preparation for the formal 2006 Transmission Rate Case, TBL held an initial public workshop on July 15, 2004, for customers and other interested parties. Three additional public workshops and meetings were held in August and September, 2004, for customers and interested parties during which TBL presented information about costs, revenue forecasts, transmission products, pricing, and rate design issues. *See http://www.transmission.bpa.gov/Business/Rates_and_Tariff/2006RateCase.cfm*.

3. Settlement Discussions

During the rate case workshop meetings, the customers approached BPA about settlement of the rate case. The customers and other interested parties met with BPA during October, November, and early December to discuss settlement. The discussions resulted in the Settlement Agreement, which was offered by TBL on December 6, 2004, signed by customers through January 7, 2005, and signed by TBL on January 11, 2005.

D. Scope of the Transmission Rate Proceeding

Many of the decisions that determine TBL's costs have been or will be made in public review processes other than the transmission rate proceeding. This section provides guidance to the Hearing Officer as to those matters that are within the scope of the transmission rate proceeding and those that are outside the scope.

1. Spending Levels

As described above, Programs In Review workshops were held throughout the region to clarify, discuss, and provide the public the opportunity to comment orally and in writing on BPA's proposed capital expenditures and expenses for transmission. After considering all comments, the Administrator closed out the public process by issuing a decision on spending levels for FY 2006–2007. That decision serves as the basis for the transmission capital and expense levels that are reflected in the transmission rate proposal. Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record any evidence or arguments that seek in any way to challenge the appropriateness or reasonableness of the Administrator's decision on transmission spending levels and sources of capital, including capital and expense levels reviewed in the Programs in Review public process. If any re-examination of sources of capital and spending levels is necessary, that re-examination will occur outside of the rate proceeding.

However, the foregoing direction to the Hearing Officer does not apply to the following matters: Customer advance capital funding, revenue financing, reserve financing, the proper modeling of financing methods in rate case studies, interest rate forecasts, scheduled amortization, forecast depreciation, forecasts of system replacements for repayment studies, interest expense, expense and revenue uncertainties, and risks included in the risk analysis.

2. Issues Decided in Power Rate Proceeding

A number of issues that affect transmission and ancillary service rates have been addressed in BPA's 2002 Power Rate Case. On June 20, 2001, the Administrator established wholesale power rates for the period October 1, 2001, through September 30, 2006. The Commission granted final approval of the rates on July 21, 2003. In the Power Rate Case, the Administrator made decisions regarding the following: A methodology for functionalizing generation and transmission costs, including a methodology for functionalizing corporate overhead costs to the business lines; costs for generation inputs for ancillary services, including operating reserves, regulating reserve, and reactive power and voltage control from generation resources; the generation costs of station service and remedial action schemes; and the allocation of the costs of generation integration and generator step-up transformers to the business lines.

The Initial Proposal for transmission rates in FY 2006 is consistent with the results of the Administrator's decision on these and all other issues decided in the Power Rate Case and will be reflected in all final decisions made in the transmission rate proceeding. The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address or revisit final decisions that were made in the 2002 Power Rate Case. In addition, the Administrator directs the Hearing Officer to exclude from the record all evidence and testimony that seek in any way to address the same issues for the rates for FY 2007, since those issues will be covered in the next power rate case. However, this direction to the Hearing Officer does not apply to the design of formula rates to recover those costs in FY 2007, nor does it apply to generation costs of station service and remedial action schemes, nor to generation integration costs that are forecasted in the 2006 Transmission Rate Case.

3. Revised Attachment K

The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address revised Attachment K to BPA's OATT. BPA is not required by law to, and does not, amend its OATT in this rate proceeding. BPA will be submitting a revised Attachment K to the Commission for approval. A party may raise challenges to revised Attachment K to the Commission at that time, unless the party has signed the Settlement Agreement and TBL does not revise its Initial Proposal.

4. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of its Initial Proposal, as required by the National Environmental Policy Act (''NEPA''). The Administrator directs the Hearing Officer to exclude from the record all evidence and argument that seek in any way to address the potential environmental impacts of the rates being developed in the 2006 Transmission Rate Case. BPA's Business Plan Environmental Impact Statement (''Business Plan EIS''), completed June 1995, evaluated the environmental impacts of a range of business plan alternatives that could be varied by applying policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. However, the EIS also addressed response strategies BPA could pursue if BPA's costs exceeded its revenues.

In August 1995, the BPA Administrator issued a Record of Decision (''Business Plan ROD'') that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance.

Because the Initial Proposal likely would assist BPA in accomplishing these goals, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs and resulting rate levels evaluated in the Business Plan EIS; thus implementation of this rate proposal would not be expected to result in significantly different environmental impacts from those examined in the Business Plan EIS. Therefore, BPA expects that this rate proposal will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD. As part of the Administrator's Record of Decision that will be prepared regarding this 2006 Transmission Rate Case, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may, instead, issue another appropriate NEPA document.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the pre-hearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by March 16, 2005. Written views, supporting information, questions, and arguments should be submitted to Rate Case, TBL Communications, at the address listed in the **ADDRESSES** section of this Notice, or may be e-mailed to *tblfeedback@bpa.gov.*

Persons wishing to become a party to this transmission rate adjustment proceeding must notify BPA in writing. Petitioners may designate no more than two (2) representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status, and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by 4:30 p.m., Pacific Time, on February 14, 2005. The petition should be directed to: Jonathan Shardlow, Hearing Clerk—LT–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, ORregon 97232.

A copy of the petition should be served on BPA's General Counsel and directed to Charles H. Combs—LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the pre-hearing conference. Any opposition to an intervention petition may instead be made at the pre-hearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to a petition to intervene filed after the pre-hearing conference shall be filed, and must be received by BPA, within two (2) days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written material entered into the record by TBL and the parties, written comments from participants and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the record, information from the PIR, documents prepared pursuant to the National Environmental Policy Act and other environmental statutes, and such other material or information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final Record of Decision on all parties. BPA will file its rates with the Commission for confirmation and approval after issuance of the Final Record of Decision.

During the rate proceeding, TBL must continue to meet with customers in the ordinary course of business. To comport with the rate case procedural rule prohibiting *ex parte* communications, TBL will provide necessary notice of meetings involving rate proceeding issues to provide an opportunity for participation by all rate proceeding parties. Parties should be aware, however, that such meetings may be held on very short notice and should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding.

Part IV—Major Studies and Summary of Transmission Rate Proposal

A. Major Studies

1. *Revenue Requirement Study*—This Study includes the calculation of transmission revenue requirements for the 2006–2007 Rate Period and demonstration of cost recovery for the transmission function. The Revenue Requirement Study also includes an analysis of financial risks.

2. *Revenue Forecast Testimony*—This testimony includes the FY 2006 and 2007 revenue forecast at current 2004 transmission and ancillary service rates and at proposed 2006 rate levels based on forecasted loads and sales during the period.

B. Summary of Proposal

1. *Transmission rates*—TBL is proposing five rate schedules for the use of its Integrated Network segment:

• *Formula Power Transmission (FPT–06.1 and FPT–06.3) rates*—The two FPT rates are based on the cost of specific types of facilities including a distance component for the use of transmission lines, and are charged on a contract demand basis. Included in the FPT rates are the costs of the two required ancillary services: Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service. The FPT–06.1 rate is proposed for contracts that allow annual rate adjustments. The FPT–06.1 rate is a formula rate that is calculated quarterly to reflect the quarterly change in the Reactive Supply and Voltage Control from Generation Sources Service rate, a small component of the cost basis of the FPT rate. The FPT–06.3 rate is proposed for contracts that allow a rate change only once every three years. The FPT–06.3 rate is fixed for the rate period at the level of the FPT–04.3 rate for FY 2005. Although TBL has not offered new FPT wheeling contracts since the OATT was adopted, a number of FPT contracts continue in place during the rate period.

• *Integration of Resources (IR–06) rate*—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to the PTP service. Charges for the two required ancillary services: Scheduling, System Control and Dispatch Service, and Reactive Supply and Voltage Control from Generation Sources Service, are embedded in the IR rate. The proposed IR–06 rate is a formula rate that is calculated quarterly to reflect the quarterly change in the Reactive Supply and Voltage Control from Generation Sources Service rate, a small component of the cost basis of the IR rate. A Short Distance discount is available when resources are 75 miles or less from load. Although TBL is not offering new IR contracts, some IR contracts remain in place during the rate period.

• *Network Integration Transmission (NT–06) rate*—The NT rate applies to customers taking Network Integration Transmission Service under the OATT. The NT rate schedule includes a Load Shaping Charge applied to the customer's total load on the hour of the Monthly Transmission Peak Load, and a Base Charge applied to the customer's total load less CSL, if any. CSL is the amount of load that the customer agrees to serve without using its NT service. Beginning October 2005, CSL is being limited to the annual amount and resources specified in NT service agreements at that time. TBL intends to eliminate CSL October 1, 2011.

• *Point-to-Point (PTP–06) rate*—The PTP rate is a contract demand rate that applies to customers taking PTP Transmission Service on BPA's Integrated Network facilities under the OATT. There are separate PTP rates for long-term firm service; short-term firm and non-firm service; and hourly firm and non-firm service. The rate for long-term firm service contains a Short Distance discount. All short-term and hourly PTP rates are downwardly flexible. The billing factor for Hourly Nonfirm Service will change from scheduled amounts to Reserved Capacity on 60 day notice when changes to TBL systems and business practices have been made that will accommodate the Reserved Capacity billing factor. In addition, the rate schedule is revised to reflect the Settlement Agreement provision to limit additional charges for redirecting long-term service to short-term service.

In addition to the four rates for network use, other proposed transmission rates include:

• *The Southern Intertie (IS–06) and Montana Intertie (IM–06) rates* are contract demand rates that apply to customers taking PTP Transmission Service under the OATT on the Southern Intertie and Montana Intertie, respectively. These rates are structured similarly, and are revised similarly, to the PTP rate for service on network facilities.

• *The Townsend-Garrison Transmission (TGT–06) rate and the Eastern Intertie rate (IE–06)* are developed pursuant to the Montana Intertie agreement.

• *The Use-of-Facilities (UFT–06) rate* establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

• *The Advance Funding (AF–06) rate* allows TBL to collect the capital and related costs of specific facilities through an advance-funding mechanism. Revisions are proposed to the rate schedule to clarify its availability to implement FERC Order 2003–A.[3]

2. *Ancillary Services rates.* In addition to the rate level changes specified in Attachment 1 to the Settlement Agreement, TBL proposes to revise other aspects of its Ancillary Services and Control Area Services rates as follows:

• The rates for *Scheduling, System Control, and Dispatch Service* and *Reactive Supply and Voltage Control from Generation Sources Service* reflect the eventual change in the Hourly Nonfirm billing factor to Reserved Capacity.

• *The Reactive Supply and Voltage Control from Generation Sources Service* rate is a formula rate that is determined quarterly beginning October 1, 2005, to reflect the cost of non-federal reactive rates and self-supply, and to reflect the reactive cost of federal system resources for FY 2007 determined in a BPA power rate case.

• The rates for *Regulation and Frequency Response Service and Operating Reserves—Spinning and Supplemental* are formula rates that adjust once on October 1, 2006, to reflect the generation input costs associated with federal system resources for FY 2007 determined in a BPA power rate case.

3. *Other Rates and Charges.* Other charges that may apply to a customer's transmission service include a Delivery Charge for the use of low-voltage delivery substations, a Power Factor Penalty Charge, a Reservation Fee for customers who delay commencement of long-term firm service, Incremental Cost Rates for transmission requests that require new facilities, and an Unauthorized Increase Charge for customers who exceed their contracted amounts.

The proposed Failure to Comply Penalty Charge for failure to comply with TBL's curtailment, redispatch or load shedding orders is revised to clarify that a customer must curtail, or redispatch actual use of the transmission system. Finally, the rate proposal includes the GTA Delivery Charge, set at the same level as the Delivery Charge for federal facilities, for low-voltage delivery service of federal power provided under GTAs and other non-federal transmission service agreements.

Part V—2006 Transmission and Ancillary Service Rate Schedules

BPA's proposed 2006 Transmission Rate Schedules are available for viewing and downloading on TBL's website at *http://www.transmission.bpa.gov/Business/Rates_ and_Tariff/2006RateCase.cfm.* A copy of the proposed rate schedules also is available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st floor, 905 NE 11th Avenue, Portland, Oregon.

Issued in Portland, Oregon, on January 24, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 05–1890 Filed 2–1–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–106–001]

Algonquin Gas Transmission, LLC; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 12, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing a compliance filing pursuant to a Commission order issued on December 28, 2004, in Docket No. RP05–106–000. (Algonquin Gas Transmission, LLC, 109 FERC ¶61,371 (2004)).

Algonquin states that, in accordance with paragraph 10 of the December 28 Order, Algonquin is revising section 1.40 of the general terms and conditions of its FERC Gas Tariff to provide that Algonquin may agree, on a not unduly discriminatory basis, that a firm service agreement subject to a negotiated or discounted rate qualifies as a ROFR agreement.

Algonquin states that copies of the filing were served upon all affected customers of Algonquin and interested state commissions, as well as upon all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–383 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

[3] Standardization of Generator Interconnection Agreements and Procedures, Reg-Preamble, FERC Stats & Regs para. 31,160 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–435–004]

ANR Pipeline Company; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 18, 2005, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Sub First Revised Sheet No. 130.01, with an effective date of March 1, 2005.

ANR states that the tariff sheet is being filed in compliance with the Commission's order issued December 22, 2004, in the referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E5–382 Filed 2–1–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–156–000]

ANR Pipeline Company; Notice of Filing

January 25, 2005.

Take notice that on January 19, 2005, ANR Pipeline Company (ANR) tendered for filing its final Dakota cost recovery filing.

ANR states that the purpose of the filing is to detail the final reconciliation of the Dakota costs and amounts collected through the Dakota surcharge as required by section 28.1(c)(8) of the General Terms and Conditions of its tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *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 February 1, 2005.

Magalie R. Salas,
Secretary.
[FR Doc. E5–390 Filed 2–1–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–111–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 13, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective March 1, 2005:

Substitute First Revised Sheet No. 452
Substitute First Revised Sheet No. 453

CEGT states that the purpose of this filing is to comply with the Commission's order dated December 30, 2004 in the above referenced docket.

Any person desiring to protest this filing must file in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–384 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–135]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

January 25, 2005.

Take notice that on January 18, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Arkansas Western Gas Company.

CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests that the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date of an expansion project undertaken by CEGT.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–391 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–062]

Dominion Transmission, Inc.; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 19, 2005, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 1300, and Seventh Revised Sheet No. 1406, with an effective date of December 8, 2004.

DTI states that the purpose of this filing is to comply with the letter order issued in Docket No. RP96–383–061 on January 7, 2005. Specifically, DTI states that, as accepted by the Commission in the letter order, the effective date for the proposed tariff sheets has been changed to December 8, 2004 from the proposed November 1, 2004. DTI notes that no other changes are being proposed.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–393 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–153–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

January 25, 2005.

Take notice that on January 18, 2005, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective February 17, 2005:

First Revised Sheet No. 201
Original Sheet No. 207
Sheet Nos. 208–209
First Revised Sheet No. 210
Original Sheet No. 215
Sheet Nos. 216–219
First Revised Sheet No. 235
First Revised Sheet No. 236

Egan Hub states that the purpose of this filing is to modify the forms of service agreements for its Firm Storage Service, Secondary Firm Storage Service, and Hub Services.

Egan Hub states that copies of the filing were served upon all affected customers of Egan Hub and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–387 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–251–001, RP04–248–001]

El Paso Natural Gas Company; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 14, 2005, El Paso Natural Gas Company (El Paso) submitted a compliance filing pursuant to Commission Order dated December 20, 2004 in the above listed proceedings. El Paso tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A the tariff sheets listed in Appendix A to the filing, to become effective February 20, 2005.

El Paso states that the tariff sheets implement the pro forma tariff sheets approved by the Commission providing for strained and critical operating conditions procedures that were included as part of the settlement filed in these proceedings.

El Paso states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

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 and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–380 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–152–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 25, 2005.

Take notice that on January 13, 2005, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets, to become effective February 14, 2005:

Sixth Revised Sheet No. 336,
Sixth Revised Sheet No. 338,
Sixth Revised Sheet No. 339,
Second Revised Sheet No. 342,
Third Revised Sheet No. 346,
Eighth Revised Sheet No. 350,
Fifth Revised Sheet No. 350A.

El Paso states that the tariff sheets are filed to remove the tariff provisions applicable to the temporary waiver of the maximum rate ceiling for capacity release transactions that expired on September 30, 2002.

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. E5–386 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–154–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 25, 2005.

Take notice that on January 18, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing a refund report which reports GTN's refund of interruptible transportation revenues on its Coyote Springs Lateral, in compliance with section 35A of the General Terms & Conditions of GTN's FERC Gas Tariff, Third Revised Volume No. 1–A.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–388 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–155–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change To FERC Gas Tariff

January 25, 2005.

Take notice that on January 18, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on February 17, 2005:

First Revised Sheet No. 108
Second Revised Sheet No. 110
Second Revised Sheet No. 115

Iroquois states that, on January 29, 2004 the Commission issued its order on rehearing and clarification affirming, among other things, its earlier decision allowing transporters to eliminate the five-year matching cap for existing capacity subject to the Right of First Refusal (ROFR). Accordingly, Iroquois hereby submits this filing to remove the five-year matching cap from its ROFR provision consistent with other pipeline approvals.

Iroquois further states that, at the request of its customer working group, it proposes to revise language in sections 29.2 and 29.5 to clarify the applicability of the ROFR and to allow for extension of a service agreement prior to expiration of its term and prior to posting available capacity under the ROFR respectively.

Iroquois also states that it is making grammatical and non substantive corrective changes to Second Revised Sheet No. 110.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–389 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–132–001]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

January 25, 2005.

Take notice that on January 14, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing an amended annual reconciliation filing pursuant to section 35 of its general terms and conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on February 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–385 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–014]

Texas Eastern Transmission, LP; Notice of Compliance Filing

January 25, 2005.

Take notice that on January 12, 2005, Texas Eastern Transmission, LP (Texas Eastern) submitted a compliance filing pursuant to a Commission order issued on November 3, 2004, in Docket Nos. RP99–480–010 and RP99–480–011, *Texas Eastern Transmission*, LP, 109 FERC ¶61,145 (2004).

Texas Eastern states that it is withdrawing and replacing sub third revised sheet No. 507 as filed in its December 3, 2004 compliance filing in Docket No. RP99–480–013. Texas Eastern is proposing in this filing to revise section 1.35A of the general terms and conditions of its FERC gas tariff to provide that Texas Eastern may agree, on a not unduly discriminatory basis, that a firm service agreement subject to a negotiated or discounted rate qualifies as a ROFR Agreement.

Texas Eastern states that copies of the filing were served upon all affected customers of Texas Eastern and interested state commissions, as well as upon all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–376 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–32–000, et al.]

PSEG Power Connecticut LLC, et al.; Electric Rate and Corporate Filings

January 26, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Power Connecticut LLC

[Docket No. EG05–32–000]

Take notice that on January 11, 2005, PSEG Power Connecticut LLC (PSEG Power Connecticut) filed with the Commission an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission regulations.

Comment Date: 5 p.m. Eastern Time on February 11, 2005.

2. Trimont Wind I LLC

[Docket No. EG05–33–000]

Take notice that on January 21, 2005, Trimont Wind I LLC (Trimont) filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on February 11, 2005.

3. Mendota Hills, LLC

[Docket No. EG05–34–000]

Take notice that on January 21, 2005, Mendota Hills, LLC, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on February 11, 2005.

4. SeaWest WindPower, Inc.

[Docket No. EG05–35–000]

Take notice that on January 24, 2005, SeaWest WindPower, Inc. (SeaWest WindPower) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

SeaWest WindPower states that a copy of the Application has been served on the U.S. Securities and Exchange Commission and the California Public Utilities Commission, the Indiana Utility Regulatory Commission, the Oregon Public Utility Commission, and the Wyoming Public Service Commission.

Comment Date: 5 p.m. Eastern Time on February 7, 2005.

5. New York Independent System Operator, Inc.

[Docket No. EL02–125–003]

Take notice that on January 21, 2005 the New York Independent System Operator, Inc. (NYISO) filed modifications to its Open Access Transmission Tariff (OATT) to implement revisions to Attachment S. The NYISO has requested an effective date of October 25, 2004.

The NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, upon the electric utility regulatory agencies in New Jersey and Pennsylvania, and upon the parties on the Service List for this docket.

Comment Date: 5 p.m. Eastern Time on February 11, 2005.

6. Entergy Power Ventures, L.P.; Warren Power, LLC; Northern Iowa Windpower, LLC; Entergy-Koch Trading, LP; Llano Estacado Wind, LP; EWO Marketing, LP

[Docket Nos. ER02–862–003, ER01–1804–002, ER02–257–003, ER01–2781–007, ER02–73–005, ER01–666–003]

Take notice that on January 6, 2005, Entergy Power Ventures, L.P., Warren Power, LLC, Northern Iowa Windpower, LLC, Entergy-Koch Trading, LP, Llano Estacado Wind, LP and EWO Marketing, LP filed a notification of non-material change in status with respect to their authority to engage in market-based power sales.

Comment Date: 5 p.m. Eastern Time on February 7, 2005.

7. ISO New England Inc.; Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation, on behalf of its affiliates Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, and Canal Electric Company; New England Power Company; Northeast Utilities Service Company, on behalf of its operating company affiliates The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire and Holyoke Water Power Company; The United Illuminating Company; Fitchburg Gas and Electric Light Company; Unitil Energy Systems, Inc.; Vermont Electric Power Company; Central Vermont Public Service Corporation; Green Mountain Power Corporation; Vermont Electric Cooperative; Florida Power & Light Company—New England Division

[Docket No. ER05–374–001]

Take notice that on January 21, 2005, Boston Edison Company submitted an amendment to its December 22, 2004 filing in Docket No. ER05–374–000 of Schedule 21–BECO of section II of the transmission, markets and services tariff of ISO New England Inc., to reflect revisions to Boston Edison's transmission formula rate that was approved by the Commission in Docket No. ER05–69–000. Boston Edison Company, 109 FERC ¶ 61,300 (2004).

Comment Date: 5 p.m. Eastern Time on February 4, 2005.

8. Mendota Hills LLC

[Docket No. ER05–463–000]

Take notice that on January 19, 2005, Mendota Hills LLC (Mendota) filed an application requesting market-based rate authority and the grant of other authorizations and waivers of certain Commission regulations.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

9. Kentucky Utilities Company

[Docket No. ER05–465–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Madisonville, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Madisonville is designated rate schedule FERC No. 306.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

10. Kentucky Utilities Company

[Docket No. ER05–466–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Providence, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Providence is designated rate schedule FERC No. 305.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

11. Kentucky Utilities Company

[Docket No. ER05–467–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Barbourville, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA) KU states that the numbered SEPA contract between KU and the City of Barbourville is designated rate schedule FERC No. 304.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

12. Kentucky Utilities Company

[Docket No. ER05–468–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Paris, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Paris is designated rate schedule FERC No. 301.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

13. Kentucky Utilities Company

[Docket No. ER05–469–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Bardstown, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Bardstown is designated rate schedule FERC No. 302.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

14. Kentucky Utilities Company

[Docket No. ER05–470–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Nicholasville, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Nicholasville is designated rate schedule FERC No. 303.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

15. Aquila Merchant Services, Inc.

[Docket No. ER05–472–000]

Take notice that on January 19, 2005, Aquila Merchant Services, Inc. (AMS) filed a capacity and electric power sales transaction between AMS and its affiliate, Aquila, Inc (d/b/a Aquila Networks—MPS). AMS requests an effective date of June 1, 2005.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

16. Cleco Power LLC

[Docket No. ER05–473–000]

Take notice that on January 19, 2005, Cleco Power LLC (Cleco) filed certain changes to its open access transmission tariff in compliance with the requirements of Order No. 2003–B. Cleco requests an effective date of January 20, 2005. Cleco designates this filing as Second Revised Volume No. 1 of its FERC Electric Tariff, Original Sheet Nos. 114A, 116A, 215A, 222A, and 241A; First Revised Sheet Nos. 1, 7, 99, 106, 107, 113, 114, 116, 123, 128, 129, 133, 135, 136, 146, 148, 149, 160A, 168A, 174B, 187, 191, 194, 195, 203, 204, 215, 222, 241, 242, 252, 255, 257, 261, and 269; and Second Revised Sheet No. 160.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

17. Kentucky Utilities Company

[Docket No. ER05–474–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Falmouth, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Falmouth is designated rate schedule FERC No. 310.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

18. Kentucky Utilities Company

[Docket No. ER05–475–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Frankfort, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Frankfort is designated rate schedule FERC No. 311.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

19. Kentucky Utilities Company

[Docket No. ER05–476–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Corbin, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Corbin is designated rate schedule FERC No. 309.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

20. Kentucky Utilities Company

[Docket No. ER05–477–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Benham, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Benham is designated rate schedule FERC No. 308.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

21. Kentucky Utilities Company

[Docket No. ER05–478–000]

Take notice that on January 19, 2005, Kentucky Utilities (KU) (a subsidiary of LG&E Energy LLC) tendered for filing a fully executed amendment to the contract between KU and the City of Bardwell, Kentucky dealing with the pricing of power received from the Southeastern Power Administration (SEPA). KU states that the numbered SEPA contract between KU and the City of Bardwell is designated rate schedule FERC No. 307.

Comment Date: 5 p.m. Eastern Time on February 9, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–395 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–378–002]

Cameron LNG, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cameron LNG Berthing Amendment and Request for Comments on Environmental Issues

January 25, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cameron LNG Berthing Amendment involving construction and operation of facilities by Cameron LNG, LLC (Cameron LNG) in Cameron Parish, Louisiana.

On December 20, 2004, the Commission gave notice that Cameron LNG filed a request under section 3 of the Natural Gas Act for an amendment to its authorization for import facilities that was previously granted in Docket No. CP02–378–000. In the order issued on September 11, 2003, Cameron LNG was authorized to construct and operate facilities to import liquefied natural gas (LNG) near Hackberry, Louisiana. That notice gave a deadline of January 12, 2005, for the filing of motions to intervene, protest, and comment.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 25, 2005. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; Federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and to encourage them to comment on their areas of concern.

Summary of the Proposed Project

Cameron LNG seeks amended authority to make modifications to the berthing facilities at its LNG terminal to allow a larger variety of LNG tankers to use the approved terminal. The proposed modifications will require increased dredging and the addition of soil depositional areas to accommodate increased dredge material.

The ship unloading slip, as currently approved, would be about 1,250 feet by 1,100 feet. The proposed modification would increase this to about 2,600 feet (entrance width) tapering to 750 feet at the rear bulkhead wall. Cameron LNG also proposes to add an 850-foot-radius turning basin integrated into the slip.

The general location of the berthing area site is shown in Appendix 1.[1]

Non-Jurisdictional Facilities

The modifications would require either the abandonment in place or relocation of portions of 4-inch-diameter and 6-inch-diameter pipelines owned by Hilcorp Energy Company that cross the terminal and berthing area.

Land Requirements for Construction

The proposed berthing modification would increase the area required for the LNG ship unloading facilities by 34.2 acres (of which 32.8 acres are open water). As a result of the proposed configuration, some of the land-based acreages already approved would change (*i.e.*, the land required for the LNG storage tanks would decrease by 2 acres; the electrical and flare areas would decrease by 2.7 acres; and the land for administrative facilities would increase by 0.4 acres). As a result, the net increase in area requirements for permanent facilities under the proposed modification would be 29.9 acres. Cameron LNG would use an additional 4.6 acres for temporary construction areas.

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Cameron LNG's proposal. By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed modifications and the environmental information provided by Cameron LNG. The following preliminary list of issues may be changed based on your comments and our analysis:

- Effects of dredging and storage of 4.9 million cubic yards of sediment (which is 2.5 million cubic yards more than already approved);
- Sedimentation impacts on aquatic resources;
- Erosion and other impacts to coastal marsh;
- How the alignment of berthing ships affects other use of the channel; and
- Potential impacts from non-jurisdictional facilities, which could involve a horizontal directional drill of the Calcasieu River;

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Previously, on October 5, 2004, the U.S. Army Corps of Engineers, along with the Louisiana Department of Environmental Quality (Office of Environmental Services) and Louisiana Department of Natural Resources (Coastal Management Division), issued a joint public notice for Cameron LNG's request for the respective agency permits that would be required for the proposed modification.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative berthing alignments, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.; Room 1A, Washington, DC 20426.
• Label one copy of the comments for the attention of Gas Branch 1.
• Reference Docket No. CP02–378–002.
• Mail your comments so that they will be received in Washington, DC on or before February 25, 2005.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2). [3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,
Secretary.
[FR Doc. E5–394 Filed 2–1–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11858–002]

Elsinore Municipal Water District and the Nevada Hydro Company, Inc.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 25, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major unconstructed project.
b. *Project No.:* 11858–002.
c. *Date Filed:* February 2, 2004.
d. *Applicant:* Elsinore Municipal Water District and the Nevada Hydro Company, Inc.
e. *Name of Project:* Lake Elsinore Advanced Pumped Storage Project.
f. *Location:* On Lake Elsinore and San Juan Creek, in the Town of Lake Elsinore, Riverside County, California. The project would occupy federal lands, including lands managed by the Forest Service (Cleveland National Forest), Bureau of Land Management, and the Department of Defense (Camp Pendleton).
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Rexford Wait, The Nevada Hydro Company, 2416 Cades Way, Vista, California 92083, (760) 599–0086.
i. *FERC Contact:* Jim Fargo at (202) 502–6095; e-mail james.fargo@ferc.gov.
j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene and protests 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would consist of: (1) A new upper reservoir (Morrell Canyon) having a 180-foot-high main dam and a gross storage volume of 5,750 feet, at a normal reservoir surface elevation of 2,880 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 30 miles of 500 kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–377 Filed 2–1–05; 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 Waters and Soliciting Comments, Motions To Intervene, and Protests

January 25, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 2232–480.

c. *Date Filed:* December 16, 2004.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; PO Box 1006; Charlotte, NC; 28201–1006; 704–382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for filing comments and or motions:* February 28, 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–2232–480) 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:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission authorization to lease to The Sanctuary At Lake Wylie, LLC and The Sanctuary Property Owners Association (The Sanctuary) 0.416 acres of project lands for a Commercial Residential Marina at the Sanctuary. The Sanctuary is located in Mecklenburg County off of NC 49 South. The marina would consist of one cluster dock with ten boat slips, one fishing pier, 20,700 feet of shoreline stabilization, and an irrigation intake with a maximum pumping capacity of 150,000 gallons per day. The pump would run an average of three hours per day, three to four times per week, using 27,000 gallons per day. No dredging would be required.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–378 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEAPRTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–274–000]

Kern River Gas Transmission Company; Notice of Informal Settlement Conference

January 25, 2005.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 am (EST) on Wednesday, February 2, 2005 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring a possible settlement in the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas J. Burgess (202–502–6058).

Magalie R. Salas,

Secretary.

[FR Doc. E5–381 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regualtory Commission

[Docket Nos. RM05–2–000]

Policy for Selective Discounting by Natural Gas Pipelines; Notice of Extension of Time

January 25, 2005.

On January 21, 2005, the Interstate Natural Gas Association of America (INGAA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry (NOI) issued November 22, 2004, in the above-docketed proceeding. 109 FERC ¶ 61,202. INGAA states that additional time is needed because of the broad scope of the Commission's inquiry in this proceeding and because preparation of a response will require significant input from gas industry members. INGAA also states that an extension is needed due the press of Commission deadlines in other natural gas industry proceedings. INGAA finally states that the American Gas Association, American Public Gas Association, Independent Petroleum Association of America, Illinois Municipal Gas Association, Natural Gas Supply Association and Process Gas Consumers either support or do not oppose the request for additional time.

Upon consideration, notice is hereby given that an extension of time for filing comments on the NOI is granted to and including March 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–379 Filed 2–1–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[IL–224–1; FRL–7867–6]

Adequacy Status of Metro-East St. Louis, IL Submitted 1-Hour Ozone Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Metro-East St. Louis, Illinois 1-hour ozone maintenance plan are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Metro-East St. Louis can use the motor vehicle emissions budgets from the submitted 1-hour ozone maintenance plan for future conformity determinations. These budgets are effective February 17, 2005. The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *Maietta.anthony@epa.gov.*

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

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on January 10, 2005, stating that the motor vehicle emissions budgets in the Metro-East St. Louis, Illinois submitted 1-hour ozone maintenance plan for 2007 are adequate. This finding has been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

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

Dated: January 18, 2005.

Norman Niedergang,

Acting Regional Administrator.

[FR Doc. 05–1996 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0418; FRL–7693–9]

Methyl Eugenol; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide methyl eugenol, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide methyl eugenol through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0418, must be received on or before February 3, 2005.]

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nathan Mottl, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0208; fax number: e-mail address:*mottl.nathan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0418. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address, or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0418. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0418. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0418.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0418. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadlineidentified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed one existing tolerance and reached a tolerance reassessment decision for this low risk pesticide. The Agency is issuing for comment the resulting Report on Food Quality Protection Act (FQPA) for methyl eugenol, known as a TRED, as well as related risk assessments and technical support documents.

Methyl eugenol, is an insect attractant which is incorporated into end-use traps, used to attract and kill fruit flies in infested fruit, and nut orchards and vegetable crops. The attractant will be used as the sole active ingredient or with approved insecticide to kill flies that enter the traps. The traps are used for both monitoring and suppressing the fruit fly population in an integrated pest management (IPM) program.

EPA developed the methyl eugenol TRED through a modified, streamlined version of its public process for making tolerance reassessment, and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the methyl eugenol tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like methyl eugenol, which pose no risk concerns, have low use, affect few if any stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings. The Agency therefore is issuing the low-risk methyl eugenol TRED, risk assessments, and related documents simultaneously for public comment.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Methyl eugenol, however, poses no risks that require mitigation. The Agency therefore is issuing the methyl eugenol TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for Methyl Eugenol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a response to comments memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

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

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 4, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1865 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2001–0017; FRL–7866–9]

Second Draft Staff Paper for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about January 31, 2005, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft document, Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (Second Draft Staff Paper). The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, Air Quality Criteria for Particulate Matter, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM). The OAQPS also will make available for public review and comment a related draft technical support document, Particulate Matter Health Risk Assessment for Selected Urban Areas (Second Draft Risk Assessment).

DATES: Comments on the second draft Staff Paper and second draft Risk Assessment should be submitted on or before March 31, 2005.

ADDRESSEES: Submit your comments, identified by Docket ID No. OAR–2001–0017, by one of the following methods:

- Agency Web site: EDOCKET, EPA's electronic public docket and comment sytem, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2001–0017.
- Fax: Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2001–0017.
- Mail: Send your comments to: Air and Radiation Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2001–0017.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room B108, Washington, DC 20004.

Instructions: Direct your comments to Docket ID No. OAR–2001–0017. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/edkpub/do/EDKStaffCollectionDetailView?objectId=0b0007d48006d9eb,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at the web address provided under ''Instructions'' above. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744; fax (202) 566–1741.

Availability of Related Information: Documents referred to in this notice are available from the following sources:

• *Public Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2001–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the PM NAAQS review. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket telephone number is (202) 566–1744; fax (202) 566–1741. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

• *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the documents specifically referenced in this action. These documents are also available at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html;* the draft Staff Paper is available under ''Staff Papers'' and the draft Risk Assessment technical support document is available under ''Technical Documents.'' If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ross, Office of Air Quality Planning and Standards (mail code C539–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *ross.mary@epa.gov;* telephone: (919) 541–5170; fax: (919) 541–0237.

SUPPLEMENTARY INFORMATION: Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. * * *'' Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Particulate matter is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. EPA is presently reviewing the criteria and NAAQS for PM. This review includes preparation of two key documents, the Air Quality Criteria for particulate matter (''Criteria Document'') and a related ''Staff Paper''. EPA completed its Criteria Document for PM in October 2004 (69 FR 63111, October 29, 2004).

The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in the Air Quality Criteria document and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Air Quality Criteria document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

In August 2003, a first draft of this Staff Paper was released by EPA for public review and comment and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board (68 FR 51774, August 28, 2003) at a public meeting held in November 2003. Comments received from review of the first draft document have been considered in preparing this second draft Staff Paper.

Based on the information contained in the Air Quality Criteria document, this second draft Staff Paper includes assessments and analyses related to: (1) Air quality characterization; (2) integration and evaluation of health information; (3) health risk assessment; and (4) evaluation of information on visibility impairment and other welfare effects. The second draft Staff Paper also includes staff conclusions and recommendations on potential revision or retention of the 1997 PM NAAQS. Staff recommendations include consideration of revising both the primary (health-based) and secondary (welfare-based) PM NAAQS.

The second draft Risk Assessment technical support document describes and presents the results from an updated PM health risk assessment. A scoping plan, methodology documents, and the first draft Risk Assessment technical support document were previously reviewed by CASAC and the public. Comments received have been considered in developing the second draft Risk Assessment technical support document being released at this time. The risk assessment methodology and results are also discussed in the second draft Staff Paper.

The second draft Staff Paper and second draft Risk Assessment technical support document will be reviewed at an upcoming public meeting of the CASAC. A future **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will consider comments received from CASAC and the public in completing the Staff Paper and Risk Assessment technical support document.

Dated: January 26, 2005.

Gregory A. Green,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–1933 Filed 2–1–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 26, 2005.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

For Further Information Contact: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

Supplementary Information:

OMB Control Number: 3060–0841.

Title: Public Notice—Additional Processing Guidelines for DTV (Nonchecklist applications).

Form Number: FCC Forms 301 and 340.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 300.

Estimated Time per Response: 3 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 900 hours.

Total Annual Cost: $1,080,000.

Privacy Impact Assessment: No impact(s).

*Needs and Uses:*The Commission released a Public Notice on August 10, 1998, that explained how ''nonchecklist'' applications (*i.e.*, applications that do not conform to certain criteria to enable ''fast-track processing'') would be processed for Digital Television (DTV) station construction permits. This public notice explained what should be included in engineering showings and other types of application exhibits and cover letters.

This public notice for ''nonchecklist'' applications should help to resolve processing uncertainties, enable the preparation of complete and quality applications, and hasten the authorization of DTV service. TheFCC staff will use this data to ensure that interference to other DTV and NTSC (analog TV) stations is minimized.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1934 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 25, 2005.

Summary: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments should be submitted on or before March 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

For Further Information Contact: For additional information or copy of the information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

Supplementary Information:

OMB Control Number: 3060–0287.

Title: Section 78.69, Station Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,400.

Estimated Time Per Response: 0.5 hours per week (26 hours per year).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 36,400 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 78.69 requires that licensees of Cable Television Relay Stations maintain various records, including but not limited to records pertaining to transmissions, unscheduled interruptions to transmissions, maintenance, observations, inspections and repairs. All stations are required to keep station records in an orderly and legible manner by the person or persons competent to do so. Section 78.69

requires that no station record or portion of the record can be erased, obliterated, or willfully destroyed within the period of retention required. Station records are required to be maintained for a period of not less than two years. The records kept pursuant to Section 78.69 provide for a history of station operations and are reviewed by Commission staff during field investigations to ensure that proper operation of the stations is being conducted.

OMB Control Number: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service—General Information; Section 76.1603, Customer Service—Rate and Service Changes, and Section 76, 1619, Information on Subscriber Bills.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 8,260.

Estimated Time Per Response: 10 minutes to 1.0 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 29,235 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 76.1602 states that franchise authorities must provide affected operators 90 days written notice of its intent to enforce customer service standards. 47 CFR Sections 76.1603 and 76.309 set forth various customer service obligations and notification requirements for changes in rates, programming services and channel positions. In addition, Sections 76.1603 states that cable operators shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: (1) Products and services offered; (2) prices and options for programming services and conditions of subscription to programming and other services; (3) installation and service maintenance policies; (4) instructions on how to use the cable service; (5) channel positions programming carried on the system; and (6) billing complaint procedures, including the address and telephone number of the local franchise authority's cable office. Section 76.1603 states that customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by section 76.1603. Section 76.1603 states that in addition to the requirements regarding advanced notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority. 47 CFR Section 76.1619 states that in case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. The Commission requires the various disclosure and notifications contained in this collection as a means of consumer protection to ensure that subscribers and franchising authorities are knowledgeable of cable operators' business practices, current rates, rate changes for programming service and equipment, and channel line-up changes.

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility With Consumer Electronics Equipment; Section 76.1621, Equipment Compatibility Offer; Section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8,250.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 16,505 hours.

Total Annual Cost: $5,800.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 14, 2002, the Commission released an *Order,* In the Matter of Establishment of the Media Bureau and Other Organizational Changes, DA 02–577, which amended 47 CFR Section 76.630, 76.1621 and 76.1622 to reflect the reorganization of the existing Cable Services and Mass Media Bureaus into a new Media Bureau. 47 CFR Section 76.630(a) states that cable system operators shall not scramble otherwise encrypt signals carried on the basic service tier, though operators may file request for waivers of this prohibition with the Commission. When filing requests for waivers of this prohibition, operators must notify subscribers by mail of waiver requests. 47 CFR Section 76.1621 of the Commission's rules requires cable system operators that use scrambling or encryption equipment to provide subscribers special equipment that will enable the reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. 47 CFR Section 76.1622 requires cable system operators to provide in writing a consumer education program concerning equipment compatibility. The Commission has set forth these disclosure requirements for consumer protection purposes to inform subscribers of compatibility matters, and notify subscribers of cable operator'' requests to waive the prohibition on signal encryption.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1937 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 25, 2005.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor

a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

For Further Information Contact: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

Supplementary Information:

OMB Control No.: 3060–1061.

Title: Earth Station on Board Vessels (ESV).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: 2 hours (average).

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 113 hours.

Total Annual Cost: $15,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Federal Communications Commission (''Commission'') is revising OMB Control No. 3060–1061 to reflect the decisions of the Report and Order (R&O) titled, *''In the Matter of Procedures to Govern the Use of Satellite Earth Stations on Board Vessels (ESV) in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands,''* IB Docket No. 02–10, FCC 04–286. The Commission adopted the R&O on December 15, 2004 and released it on January 6, 2005. This rulemaking established licensing and service rules for ESVs operating in the 5925–6425 MHz/3700–4200 MHz Bands (C-band) and 14.0–14.5 GHz/11.7–12.2 GHz Bands (Ku-band).

The R&O includes the following new Paperwork Reduction Act (PRA) reporting requirements: (1) C-Band and Ku-Band operators (''ESV operators'') must collect and maintain vessel tracking data to assist the Commission and affected operators in identifying and resolving sources of interference; (2) as a condition of licensing, applicants proposing ESV operations in the 14.0–14.05 GHz band and planning to travel within 100km of these sites, must coordinate through the National Telecommunications and Information Administration (NTIA) Interdepartment Radio Advisory Committee (IRAC) and, if necessary, the appropriate government agency to resolve any potential concerns; and (3) ESV operators must have a contact that is available in the United States 24 hours a day, 7 days a week, to respond to Fixed Satellite (FS) operators' requests. The name, telephone number, and other pertinent information of the contact will be posted on the Commission's Web site, *http://www.fcc.gov.*

The Commission established licensing and service rules to govern ESV operations and to prevent interference to other satellite operators within the Ku-bands and C-bands. ESV operators must submit applications (FCC Form 312) and exhibits (Schedule B) to the Commission to demonstrate that they comply with the Commission's legal and/or engineering rules. Additionally, the Commission requires a myriad of technical information such as frequency of operation, maximum transmit power, antenna diameter, antenna height above sea level and velocity of the vessel to evaluate potential interference to fixed satellites from ESVs. The purposes of this information collection are as follows: (1) Establish licensing and service rules for ESVs in the Ku-band and C-band; (2) prevent harmful interference to Fixed Services (FS), Fixed Satellite Service (FSS) and other satellite services and (3) further the Commission's goals to manage spectrum efficiently and (4) advance the provision of broadband telecommunications services that will benefit U.S. citizens on passenger, government (military and civilian), cargo and large recreational vessels. Without such information, the Commission would not be able to take the necessary measures to prevent harmful interference to satellite services from ESVs. Finally, the Commission would not be able to advance its goals of managing spectrum efficiently and promoting broadband technologies to benefit American consumers throughout the United States and abroad.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1938 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 21, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal

Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0056.

Title: Part 68—Connection of Terminal Equipment to the Telephone Network.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 58,520 respondents; 70,450 responses.

Estimated Time Per Response: .05—24 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 32,027 hours.

Total Annual Cost: $1,160,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the telephone network from certain types of harm and interference to other subscribers. To ensure that consumers, providers of telecommunications, the Administrative Council, telecommunications certification bodies (TCBs), and the Commission are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers and suppliers to provide the information required by part 68. In addition, it is necessary that incumbent local exchange carriers (ILECs) provide the information in part 68 to warn their subscribers of impending disconnection of service when subscriber terminal equipment is causing telephone network harm. The Commission is seeking extension (no change) to this information collection in order to obtain the full three-year clearance from OMB.

OMB Control No.: 3060–0262.

Title: Section 90.179, Shared Use of Radio Stations.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 42,000.

Estimated Time Per Response: .75 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 31,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission was directed by the United States Congress, in the Balanced Budget Act of 1997, to dedicate 2.4 MHz of electromagnetic spectrum in the 746–806 MHz band for public safety services. Section 90.179 requires that Part 90 licensees that share use of their private land mobile radio facility on non-profit, cost-shared basis keep a written sharing agreement as part of the station records. Regardless of the method of sharing, an up-to-date list of persons who are sharing the station and the basis of their eligibility under Part 90 must be maintained. The requirement is necessary to identify users of the systems should interference problems develop. This information is used by the Commission to investigate interference complaints and resolve interference and operational complaints that may arise among the users. The Commission is seeking extension (no change) to this information collection in order to obtain the full three-year clearance from OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1939 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–112]

Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Inter-tel Technologies, Inc.'s (Inter-Tel) suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against Inter-tel.

DATES: Opposition request must be received by February 22, 2005. An opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or by February 22, 2005. The Bureau will decide any opposition request for reversal or modification of suspension within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Romanda Williams, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington DC 20554. Romanda Williams may be contacted by phone at (202) 418–1420 or e-mail at *Romanda.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceeding,* DA 05–112, which was mailed to Inter-tel and released on January 19, 2005. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedure; and (4) describes the potential effect of the debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

January 19, 2005.

Via Certified Mail—Return Receipt Requested

Mr. Steven G. Mihaylo,
Chief Executive Officer, Intel-Tel Technologies, Inc., 1615 S 52nd Street, Tempe, AZ 85281–6233.

Re: Notice of Suspension and of Proposed Debarment, File No. EB–05–IH–0012

Dear Mr. Mihaylo: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of the January 5, 2005 conviction of Inter-Tel Technologies, Inc. (''Inter-Tel'') for mail fraud and aiding and abetting in violation of 18 U.S.C. 1341 and 2, and for conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15

U.S.C. 1.[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of Inter-Tel's suspension from the schools and libraries universal service support mechanism (''E-rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies Inter-Tel that we are commencing debarment proceedings against it.[2]

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] Inter-Tel's conviction requires the Bureau to suspend it from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Inter-Tel's suspension becomes effective upon the earlier of its receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. Inter-Tel may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Inter-Tel's request must be received within 30 days after it receives this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] Based on the plea agreement upon which Inter-Tel's conviction is based, Inter-Tel pled guilty to mail fraud and other criminal offenses for activities in connection with its participation in the E-rate program with the San Francisco Unified School District (''SFUSD''). In connection with the mail fraud offense charged against Inter-Tel, the company admitted that it: (1) Assisted consultants in falsely describing equipment to be supplied to SFUSD, by hiding equipment not eligible for funding under the E-rate program in order to have the program pay for it; (2) learned that consultants had submitted bills to the Universal Service Administrative Company (''USAC'') with inflated prices, and did nothing to inform USAC that the prices had been inflated by approximately $26 million above the amounts originally bid for the project; and (3) did nothing to disclose to the SFUSD superintendent or school board that the funding requests to USAC had been increased over the original amounts, that there were inflated estimates in the bid documents, or that equipment ineligible for funding had been hidden in documents submitted to USAC. In connection with the antitrust crime charged against Inter-Tel, the company admitted that it: (1) Participated in a conspiracy with one or more vendors of equipment and services related to telecommunications, Internet access and/or internal connections, with a purpose of suppressing and eliminating competition for E-rate projects; and (2) reached an agreement with its co-conspirators to frustrate the competitive process in the E-rate projects by allocating contracts and submitting fraudulent and non-competitive bids; and (3) submitted fraudulent and non-competitive bids in accordance with the conspiratorial agreement.[11] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[12] Moreover, Inter-Tel's conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[13] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, Inter-Tel's conviction requires the Bureau to commence debarment proceedings against it.

B. Debarment Procedures

Inter-Tel may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[14] Absent extraordinary circumstances, the Bureau will debar Inter-Tel.[15] Within 90 days of receipt of any opposition to Inter-Tel's suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide Inter-Tel with notice of its decision to debar.[16] If the Bureau decides to debar Inter-Tel, its decision will become effective upon the earlier of Inter-Tel's receipt of a debarment notice or publication of the decision in the **Federal Register**.[17]

C. Effect of Debarment

If and when Inter-Tel's debarment becomes effective, it will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[18] The Bureau may, if necessary to protect the public interest, extend the debarment period.[19]

Please direct any responses to the following address: Romanda Williams, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C443, 445 12th Street, SW., Washington, DC 20554.

If Inter-Tel submits its response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, etc.), please send the response to Ms. Williams at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If Inter-Tel has any questions, please contact Ms. Williams via mail, by telephone at (202) 418–1420 or by e-mail at *romanda.williams@fcc.gov.* If Ms. Williams is unavailable, you may contact Eric Bash by telephone at (202) 418–1188 and by e-mail at *eric.bash@fcc.gov.*

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Leo P. Cunningham, Esq., Wilson Sonsini Goodrich & Rosati; Michael F. Wood, Esq., United States Department of Justice, Antitrust Division; Kristy Carroll,

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[1] *United States* v. *Inter-Tel Technologies, Inc.,* No. CR–04–399–CRB, Plea Agreement (N.D.Cal. filed Dec. 8, 2004) (*''Inter-Tel Plea Agreement''*). The Order accepting this plea agreement was signed by the Court on January 5, 2005, and entered on January 10, 2005.

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''*Second Report and Order*'').

[4] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[6] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(e)(5).

[9] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.521(a)(6).

[11] *See Inter-Tel Plea Agreement* at 5–7.

[12] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[13] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section (47 CFR 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[14] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2(i), 54.521(e)(3).

[15] *Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[16] *See id.,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[17] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[18] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[19] *Id.*

Esq., USAC.

[FR Doc. 05–1860 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2687]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

January 19, 2005.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by February 17, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Improving Public Safety Communications in the 800 MHz Band (WT Docket No. 02–55).

Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Services (ET Docket No. 00–258).

Petition for Rulemaking of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service (RM–9498).

Petition for Rulemaking of UT Starcom, Inc. Concerning the Unlicensed Personal Communications Service (RM–10024).

Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service (ET Docket No. 95–18).

Number of Petitions Filed: 15.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–1942 Filed 2–1–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011453–005.

Title: Southern Africa/Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; Mediterranean Shipping Co., S.A.; and Safmarine Container Lines N.V.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement deletes Australia, New Zealand and other islands of Oceania from the geographic scope of the agreement.

Agreement No.: 011689–009.

Title: Zim/CSCL Space Charter Agreement.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (''CSCL''); and Zim Integrated Shipping Service, Ltd. (''Zim'').

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment extends the duration of the agreement, adds a slot swap between one leg of Zim's AMP service and CSCL's ANW service, revises provisions dealing with equipment sizes, and deletes provisions relating to certain defaults, dry docking, and omission of ports.

Agreement No.: 011898.

Title: APS Joint Service Agreement.

Parties: BBC Chartering & Logistic GmbH & Co. KG (''BBC''), Clipper Elite Carriers Ltd. (''Clipper'') and Asia Project Services Ltd. (''APS'').

Filing Party: C. Jonathan Benner, Esq. and Matthew Thomas, Esq., Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004–2134.

Synopsis: The subject agreement would permit BBC and Clipper to establish a joint service, APS, in the trade between United States' ports and ports in Asia, Australia, and New Zealand.

By Order of the Federal Maritime Commission.

Dated: January 28, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–1959 Filed 2–1–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0001]

Notice of Proposed Requirement To Establish Government-wide Standard Data Elements for Use by All Federal Grant Making Agencies

AGENCY: Office of the Secretary, Grants.gov Program Management Office.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Emergency Clearance for the data set was published in the **Federal Register** on September 3, 2004 [Vol. 69, No. 171]. Public comments from the Emergency Clearance were incorporated into the proposed information collection.

#1 Type of Information Collection Request: Regular, Extension of a currently approved collection;

Title of Information Collection: SF–424 Research & Related (R&R);

Form/OMB No.: OS–4040–0001.

Use: The SF–424 (R&R) will become the government-wide data set for research grant applications. Federal agencies and grant applicants will use the standard data set and definitions for paper and electronic research grants applications. The standard data set will become the common Federal data set for research grant applications, replacing numerous agency data sets and reducing the administrative burden placed on the research grants community. The data set provides information to assist Federal program staff and grants officials in assessing the adequacy of applicant's proposals to accomplish project objectives and determine whether the business aspects of grants applications reflect program needs and grants policies. Federal agencies will not be required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application forms.

Frequency: Recording, Reporting, and on Occasion;

Affected Public: Federal, State, local, or tribal governments, business or other for profit, not for profit institutions;

Annual Number of Respondents: 459,425;

Total Annual Responses: 459,425;

Average Burden Per Response: 40 hours;

Total Annual Hours: 19,037,350;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB#OS–4040–0001), New Executive Office Building, Room 10235, Washington DC 20201.

Dated: January 26, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–1962 Filed 2–1–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection, Regular;

Title of Information Collection: Office for Human Research Protections, Fellowship Program;

Form/OMB No.: OS–0990–New;

Use: The Office for Human Research Protections (OHRP) developed the Fellowship Program to provide individuals who are interested in learning about OHRP's regulatory processes and programs with an opportunity to expand their knowledge and experience regarding the complexities of the ethical and regulatory issues relating to human subject protections in biomedical and behavioral research.

Frequency: Reporting,

Affected Public: Business or other for-profit;

Annual Number of Respondents: 25;

Total Annual Responses: 25;

Average Burden Per Response: 1 hour;

Total Annual Hours: 50;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: January 21, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–1963 Filed 2–1–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Determination and Declaration Regarding Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Health and Human Services is issuing this notice pursuant to section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act to justify the emergency use of Anthrax Vaccine Adsorbed (AVA) for prevention of inhalation anthrax. The Secretary provides notice of the determination of the Department of Defense that there is a significant potential for a military emergency involving a heightened risk to United States military forces of attack with anthrax. The determination of the Department of Defense was effective as of December 10, 2004. The Secretary also provides notice that, on the basis of such determination, he has declared an emergency justifying the authorization of the emergency use of AVA.

DATES: This Notice and the referenced declaration are effective as of January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Stewart Simonson, Assistant Secretary for Public Health Emergency Preparedness, (202) 205–2882.

SUPPLEMENTARY INFORMATION:

I. Background

AVA was first licensed by the National Institutes of Health in November 1970. Upon the delegation of vaccine regulation to FDA in 1972, FDA undertook a comprehensive review of the safety, effectiveness, and labeling of all vaccines. *See* 21 CFR 601.25. Under this review, independent advisory panels evaluated the safety and effectiveness data of vaccines to assure that they met appropriate standards. The advisory panel that reviewed AVA concluded that it is safe, effective, and not misbranded, and FDA issued a proposal to adopt the panel's recommendation (the Bacterial Vaccines and Toxoids Efficacy Review). 50 FR 51002 (Dec. 13, 1985).

In March 2003, six plaintiffs, known as John and Jane Doe 1 through 6, filed suit in the United States District Court for the District of Columbia (the Court) seeking the Court to enjoin the Anthrax Vaccine Immunization Program (AVIP) of the Department of Defense, and to declare AVA an investigational drug when used for protection against inhalation anthrax. On December 22, 2003, the Court issued a preliminary injunction barring inoculations under the AVIP in the absence of informed consent or a Presidential waiver of the informed consent requirement.

In the **Federal Register** of January 5, 2004 (69 FR 255), FDA published a final rule and final order in response to the report and recommendations of the independent advisory panel that reviewed the safety and effectiveness data pertaining to AVA. Following FDA's issuance of the final rule and final order, the Court lifted the preliminary injunction on January 7, 2004, except as it applied to the six Doe plaintiffs.

On October 27, 2004, the Court issued a memorandum opinion vacating and remanding the January 2004 final rule and final order to FDA for reconsideration, following an appropriate notice and comment period. The Court also enjoined operation of the AVIP for inoculation using AVA to prevent inhalation anthrax. On December 29, 2004, FDA reopened the comment period on the Bacterial Vaccine and Toxoids Efficacy Review for 90 days. As a result of the Court's October 27, 2004, order, the use of AVA for the prevention of inhalation anthrax under the AVIP is deemed an unapproved use of an approved product.

II. Determination of the Department of Defense

On December 10, 2004, pursuant to section 564(b)(1)(B) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(1)(B), the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to United States military forces of attack with anthrax.

By letter dated December 22, 2004, the Assistant Secretary of Defense for Health Affairs (Assistant Secretary) requested that the Food and Drug Administration issue an Emergency Use Authorization for the use of AVA for protection against inhalation anthrax. The letter of the Assistant Secretary states that the Deputy Secretary of Defense has assigned authority from the Secretary of Defense to make the statutory determination under section 564(b)(1)(B) of the Federal Food, Drug, and Cosmetic Act.

III. Declaration of the Secretary of Health and Human Services

On December 10, 2004, the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to United States military forces of attack with anthrax. Pursuant to 21 U.S.C. 360bbb–3(b) and on the basis of such determination, I hereby declare an emergency justifying the authorization of the emergency use of Anthrax Vaccine Adsorbed subject to the conditions described in the authorization issued under 21 U.S.C. 360bbb(a). Notice of the authorization issued under 21 U.S.C. 360bbb(a) is provided elsewhere in this issue of the **Federal Register**.

Dated: January 14, 2005.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–2027 Filed 1–31–05; 11:39 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grants for Battered Women's Shelters.

OMB No.: New collection.

Description: This information collection is authorized under Title III of the Child Abuse Amendments of 1984, Public Law 98–457, as amended. In response to the program announcement, the respondents must submit information about their services program and their eligibility. Information that is collected is used to award grants under the Grants for Battered Women's Shelters program.

Respondents: State agencies administering the Family Violence Prevention and Services program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State FVPSA Agencies	53	1	6	318
Estimated Total Annual Burden Hours				318

Additional Information: Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: January 26, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–1895 Filed 2–1–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that, under the authority vested in me by the Secretary, Department of Health and Human Services, I have redelegated to the Commissioner, Administration on Children, Youth and Families, with the authority to further redelegate to the Director, Family Youth Services Bureau, the authority to approve/disapprove cooperative research or demonstration projects under Section 1110 of the Social Security Act, and as amended hereafter, when such projects pertain to the abstinence education activities referenced in Public Law 108–447 at Title II, Division F.

This delegation excludes the authority to submit reports to Congress. Further, this delegation shall be exercised under the Department's existing delegation and policy on regulations and under financial and administrative requirements applicable to all Administration for Children and Families authorities. In addition, where all or part of any research or demonstration project is wholly financed with Federal funds made available under section 1110 of the Social Security Act, without any State, local, or other non-Federal financial participation, that project must be approved by the Secretary of Health and Human Services.

I have ratified any actions taken by the Commissioner, Administration on Children, Youth and Families, or any other Administration on Children, Youth and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation. This delegation was effective on the date of signature.

Dated: January 21, 2005.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 05–1896 Filed 2–1–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0040]

Authorization of Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax by Individuals at Heightened Risk of Exposure Due to Attack With Anthrax; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for Anthrax Vaccine Adsorbed (AVA) for prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by the Department of Defense (DoD) to be at heightened risk of exposure due to attack with anthrax. FDA is issuing this Authorization under the Federal Food, Drug, and Cosmetic Act (the act), as requested by DoD. The Authorization contains, among other things, conditions on the emergency use of AVA. The Authorization follows the determination by DoD that there is a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax. On the basis of such determination, Secretary of Health and Human Services Tommy G. Thompson (the Secretary) declared an emergency justifying the authorization of the emergency use of AVA. The Authorization, which includes an explanation of the reasons for its issuance, is reprinted in this Notice.

DATES: The Authorization is effective as of January 27, 2005.

ADDRESSES: Submit written requests for single copies of the Emergency Use Authorization to the Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the act (21 U.S.C. 360bbb–3), as amended by the Project BioShield Act of 2004 (Public Law 108–276), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product during a declared emergency involving a heightened risk of attack on the public or U.S. military forces. With this EUA authority, FDA can help assure that medical countermeasures may be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by such agents, when there are no adequate, approved, and available alternatives to protect the American people and the U.S. military.

Section 564(b)(1) of the act provides that, before an EUA may be issued, the Secretary must declare an emergency based on one of the following grounds:

(1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

(2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

(3) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act (PHS Act) that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

Once the Secretary has declared an emergency justifying an authorization under section 564 of the act, FDA may authorize the emergency use of a drug, device, or biological product if the agency concludes, based on the information and data available to the agency, that the statutory criteria of section 564(c) of the act are satisfied. Under section 564(h)(1) of the act FDA is required to publish in the **Federal Register** notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. The explanation may include a summary of data submitted to FDA in an application under section 505(i) or 520(g) of the act (21 U.S.C. 355(i) or 21 U.S.C. 360j(g)).

Section 564 of the act permits FDA to authorize, during the effective period of the declaration, the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), and 515 of the act (21 U.S.C. 355, 21 U.S.C. 360(k), 21 U.S.C. 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) (to the extent feasible and appropriate given the circumstances of the emergency), FDA concludes:

(1) That the agent specified in the declaration of emergency can cause a serious or life-threatening disease or condition;

(2) That, based on the totality of scientific evidence available, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing—(a) the serious or life-threatening disease or condition referred to in paragraph (1); or (b) a serious or life-threatening disease or condition caused by a product authorized under section 564, or approved, cleared, or licensed under the act or PHS Act, for diagnosing, treating, or preventing the disease or condition referred to in paragraph (1) and caused by the agent specified in the declaration of emergency;

(3) That the known and potential benefits of the product outweigh the known and potential risks of the product when used to diagnose, prevent, or treat the serious or life-threatening disease or condition that is the subject of the declaration; and

(4) That there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such serious or life-threatening disease or condition.

II. EUA Request for AVA

On December 10, 2004, pursuant to section 564(b)(1)(B) of the act (21 U.S.C. 360bbb–3(b)(1)(B)), the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to United States military forces of attack with anthrax. On January 14, 2005, pursuant to section 564(b) of the act, and on the basis of such determination, Secretary of Health and Human Services Tommy G. Thompson declared an emergency justifying the authorization of the emergency use of AVA. Notice of the determination of the Deputy Secretary of Defense and the declaration of the Secretary of Health and Human Services is published elsewhere in this issue of the **Federal Register**.

III. Significance of Notice

The issuance of this Authorization for the emergency use of AVA is the first time that the EUA authority is being used. FDA intends to explain clearly the reasons for each issuance, termination, or revocation of an EUA. The agency wishes to make its decision-making understandable to help ensure that members of the public, and particularly those individuals who may be eligible to receive a medical product authorized for emergency use, are informed about the basis of an EUA determination. The amount of information that will be provided regarding each authorization will depend on the circumstances of the emergency. We anticipate that in some circumstances, an EUA will be issued very quickly, and time may not permit the agency to prepare supplementary documents beyond the letter of authorization and the notice required by section 564(h)(1) of the act. Other circumstances may afford greater opportunity to produce materials in addition to those prepared and disseminated as a condition of authorization under section 564(e) of the act. Thus, the amount of additional information that we will provide will necessarily vary on a case-by-case basis. The agency will publish notice of each EUA and intends also to make the notice and certain supplementary information available on its website and in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, which is open to the public between 9 a.m. and 4 p.m., Monday through Friday.

Because the statute is self-executing, FDA does not require regulations or guidance to implement the EUA authority. However, we believe that it would be helpful for stakeholders and the public to have more information about the EUA authority, and the process that the agency is proposing to adopt for the consideration of EUA requests. Accordingly the agency is planning to issue draft guidance on this topic in the near future.

IV. Electronic Access

An electronic version of this notice and the full text of the Authorization are available on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*.

V. The Authorization

Having consulted with NIH and CDC, and having concluded that the criteria for issuance of this Authorization under section 564(c) of the act are met, FDA has authorized the emergency use of AVA for prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by DoD to be at heightened risk of exposure due to attack with anthrax. The Authorization follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the act:

William Winkenwerder, Jr., M.D.
Assistant Secretary of Defense for Health Affairs
The Pentagon
Washington, D.C. 20301–1200

Re: Request for Emergency Use Authorization for the Armed Forces Pending Re-determination on the Licensed Use of Anthrax Vaccine Adsorbed for Protection Against Inhalational Anthrax

Dear Dr. Winkenwerder:

This is in response to your letter of December 22, 2004, requesting that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) regarding the use of Anthrax Vaccine Adsorbed (AVA) for the prevention of inhalational anthrax, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act).

On December 10, 2004, pursuant to section 564(b)(1)(B) of the Act, 21 U.S.C. § 360bbb–3(b)(1)(B), the Deputy Secretary of Defense determined that there is a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax.[1] On January 14, 2005, pursuant to section 564(b) of the Act, and on the basis of such determination, Secretary of Health and Human Services, Tommy G. Thompson declared an emergency justifying the authorization of the emergency use of AVA. Having consulted with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC), and having concluded that the criteria for issuance of this authorization under section 564(c) of the Act are met, I am authorizing the emergency use of AVA for prevention of inhalation anthrax,[2] subject to the conditions established herein.[3]

[1] You state in your letter that the Deputy Secretary of Defense has assigned authority from the Secretary of Defense to make the statutory determination under section 564(b)(1)(B) of the Act.

[2] The Secretary of Health and Human Services has delegated his authority to issue an EUA under section 564 to the FDA Commissioner.

[3] The terms ‘‘inhalation anthrax’’ and ‘‘inhalational anthrax’’ are used interchangeably.

I. Background

AVA was first licensed by NIH in November 1970.[4] Upon the delegation of vaccine regulation to FDA in 1972, FDA undertook a comprehensive review of the safety, effectiveness, and labeling of all vaccines licensed prior to July 1, 1972.[5] Under this review, independent advisory panels evaluated the safety and effectiveness data of vaccines to assure that they met appropriate standards. The advisory panel that reviewed AVA concluded that it is safe, effective, and not misbranded, and FDA issued a proposal to adopt the panel's recommendation (the Bacterial Vaccines and Toxoids Efficacy Review).[6]

In March 2003, six plaintiffs, known as John and Jane Doe 1 through 6, filed suit in the United States District Court for the District of Columbia (the Court) seeking the Court to enjoin the Anthrax Vaccine Immunization Program (AVIP) of the Department of Defense (DoD), and to declare AVA an investigational drug when used for protection against inhalation anthrax. On December 22, 2003, the Court issued a preliminary injunction barring inoculations under the AVIP in the absence of informed consent or a Presidential waiver of the informed consent requirement.

In the **Federal Register** of January 5, 2004,[7] FDA published a final rule and final order in response to the report and recommendations of the independent advisory panel that reviewed the safety and effectiveness data pertaining to AVA. Following FDA's issuance of the final rule and final order, the Court lifted the preliminary injunction on January 7, 2004, except as it applied to the six Doe plaintiffs.

On October 27, 2004, the Court issued a memorandum opinion vacating and remanding the January 2004 final rule and final order to FDA for reconsideration, following an appropriate notice and comment period. The Court also enjoined operation of the AVIP for inoculation using AVA to prevent inhalation anthrax. On December 29, 2004, FDA published a proposed rule and proposed order reopening the comment period on the Bacterial Vaccine and Toxoids Efficacy Review for 90 days.[8] As a result of the Court's order of October 27, 2004, the use of AVA by DoD for the prevention of inhalation anthrax under the AVIP is deemed an unapproved use of an approved product for purposes of section 564(a)(2) of the Act. But for the Court's order, FDA would not consider the use of AVA for inhalation anthrax to be an unapproved use.

II. Criteria for Issuance of Authorization

Having considered the December 10, 2004, determination by the Deputy Secretary of Defense that there is a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax, and the January 14, 2005, declaration of emergency by the Secretary of Health and Human Services, and after consultation with NIH and CDC, I have concluded that the use of AVA to prevent inhalation anthrax meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

(1) anthrax (*Bacillus anthracis*) can cause a serious or life-threatening disease or condition;

(2) based on the totality of scientific evidence available to FDA, AVA is effective in preventing inhalation anthrax; therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act; and that the known and potential benefits of AVA, when used to prevent inhalation anthrax, outweigh the known and potential risks of the product; and

(3) there is no adequate, approved, and available alternative to AVA for preventing inhalation anthrax.[9]

Specifically, I have concluded, pursuant to section 564(c)(1) of the Act, that anthrax (*Bacillus anthracis*) can cause inhalation anthrax, which is a serious or life-threatening disease or condition. The fatality rate for inhalation anthrax in the United States is estimated to be approximately 45 percent to 90 percent. From 1900 to October 2001, there were 18 identified cases of inhalation anthrax in the United States, the latest of which was reported in 1976, with an 89 percent (16/18) mortality rate. Most of these exposures occurred in industrial settings, i.e., textile mills. From October 4, 2001, to December 5, 2001, a total of 11 cases of inhalation anthrax linked to intentional dissemination of *Bacillus anthracis* spores were identified in the United States. Five of these cases were fatal. These fatalities occurred despite aggressive medical care, including antibiotics.

I have concluded that, based on the totality of scientific evidence available to FDA, including data from at least one well-controlled field study, AVA is effective in preventing inhalation anthrax; therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act. In addition, pursuant to section 564(c)(2)(B) of the Act, I have concluded that it is reasonable to believe that the known and potential benefits of AVA outweigh the known and potential risks of the product. The available scientific evidence that supports these conclusions includes the following:

- A well-controlled efficacy field study using an earlier version of a protective antigen-based anthrax vaccine was conducted in mill workers from 1955-1959. In a comparison of anthrax cases between the placebo and vaccine groups, including both inhalation and cutaneous cases in those who were completely vaccinated, the calculated vaccine efficacy level against all reported cases of anthrax combined was 92.5 percent (lower 95 percent CI = 65 percent). The efficacy analysis included all cases of anthrax disease regardless of the route of exposure or manifestation of disease.
- Epidemiological surveillance data on the occurrence of anthrax disease in at-risk industrial settings for the years 1962-1974 provides further supportive evidence of the effectiveness of AVA. In that time period, individuals received either AVA, or an earlier version of anthrax vaccine. Of the 24 anthrax cases that occurred in mill employees during that period, no cases occurred in those who had received the full vaccination series.
- The safety of AVA was evaluated in a 5-year (1967-1971) open-label safety study in which 15,907 doses of AVA were administered to approximately 7,000 textile employees, laboratory workers, and other at-risk individuals. Severe local reactions were reported in 0.15 percent of doses administered (24 reports). There were 150 reports (0.94 percent of doses administered) of moderate local reactions and 1,373 reports (8.63 percent of doses administered) of mild local reactions. In the same open label study, four cases of systemic reactions were reported during a 5-year reporting period (<0.06 percent of doses administered). These reactions, which were reported to have been transient, included fever, chills, nausea, and general body aches.
- Recently (1996-1999), an assessment of safety was conducted as part of a randomized clinical study conducted by the U.S. Army Medical Research Institute of Infectious Diseases. Four of the 28 volunteers reported seven acute adverse events within 30 minutes after the subcutaneous administration of AVA. These adverse events included erythema (3), headache (2), fever (1), and elevated temperature (1). Of these events, a single patient reported the simultaneous occurrence of headache, fever, and elevated temperature (100.7°F). The most common local reactions reported after the first dose in this study were tenderness (71 percent), erythema (43 percent), subcutaneous nodule (36 percent), induration (21 percent), warmth (11 percent), and local pruritus (7 percent). Local reactions were found to occur more often in women. No abscess or necrosis was observed at the injection site.

I have concluded, pursuant to section 564(c)(3) of the Act, that there is no adequate, approved, and available alternative to AVA for preventing inhalation anthrax. No other drugs are approved for the prevention (pre-exposure) of anthrax infection. Antibiotics are effective against the germinated form of *Bacillus anthracis*, but are not effective against the spore form of the organism. Although antibiotics are available to treat anthrax infection, their effectiveness is limited, in part due to delays from the time of exposure to the initiation of treatment. Delays in the treatment of exposed persons are possible, considering the potential scenarios of exposure, and the difficulties that exist in identifying anthrax as the etiology of illness.

[4] Biological products are licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

[5] *See* 21 C.F.R. § 601.25.

[6] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review, 50 Fed. Reg. 51002 (Dec. 13, 1985).

[7] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review, 69 Fed. Reg. 255 (Jan. 5, 2004).

[8] Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review; Proposed Rule and Proposed Order, 69 Fed. Reg. 78281 (Dec. 29, 2004).

[9] No other criteria of issuance have been prescribed by regulation under section 564(c)(4).

III. Scope of Authorization

Pursuant to section 564(d)(1) of the Act, this authorization is limited to the use of AVA for the prevention of inhalation anthrax for individuals between 18 and 65 years of age who are deemed by DoD to be at heightened risk of exposure due to attack with anthrax.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of AVA, when used to prevent inhalation anthrax, outweigh the known and potential risks of the product for the population described above.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that AVA is effective in preventing inhalation anthrax, and therefore, it is reasonable to believe that AVA may be effective in preventing inhalation anthrax pursuant to section 564(c)(2)(A) of the Act. FDA has reviewed the scientific information available, including the studies described in Section II above, and concludes that AVA, when used for preventing inhalation anthrax, meets the standards set forth in section 564(c) of the Act.

FDA understands that DoD recognizes that the current AVA license describes an immunization schedule consisting of six doses. Certain details of DoD's EUA request are not specifically addressed in the package insert, however. DoD notes that for some personnel, the vaccination schedule was unavoidably disrupted, and DoD intends for such personnel to resume vaccinations at the point in the dosing schedule where they left off, for individuals eligible under the EUA. While this practice is not addressed in the package insert, the practice is consistent with the general recommendations of the Advisory Committee on Immunization Practices. When it is impracticable to provide a dose on a specific date recommended by the schedule, DoD intends to provide the vaccine dose as soon as practicable thereafter. Based on the totality of the scientific evidence available to FDA, it is reasonable to believe that such administration of AVA may be effective in preventing inhalation anthrax. Furthermore, the known and potential benefits of AVA, when used to prevent inhalation anthrax in the manner described above, outweigh the known and potential risks of the product. DoD also acknowledges that during the course of the EUA, the risk status of individuals initially eligible for vaccination under the EUA may change (e.g., changes in deployment or other circumstances). In such cases, DoD must determine whether such individuals continue to be at heightened risk of exposure due to attack with anthrax, and therefore, whether they continue to be eligible for vaccination with AVA under this EUA.

The use of AVA under this EUA must be consistent with and not contrary to the conditions of authorization set forth below. Subject to the foregoing limitations and under the circumstances set forth in the Deputy Secretary of Defense's determination of military emergency, AVA may be administered for the prevention of inhalation anthrax to individuals determined by DoD to be at heightened risk of exposure due to attack with anthrax.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Conditions Designed to Ensure that Health Care Providers or Authorized Dispensers Administering the Product Are Informed. DoD will conduct an educational and information program under appropriate conditions designed to ensure that health care providers or authorized dispensers administering AVA under this authorization are informed:

(1) that FDA has authorized the emergency use of AVA for preventing inhalation anthrax;

(2) of the significant known and potential benefits and risks of the emergency use of AVA, and the extent to which such benefits and risks are unknown; and

(3) of the alternatives to AVA that are available, and of their benefits and risks.

With respect to condition (2), above, relating to provision of the significant known and potential benefits and risks of the emergency use of AVA, DoD will assure that the manufacturer's package insert is available to all health care providers or authorized dispensers who administer AVA. DoD will also provide to all such health care providers or authorized dispensers the same information provided to potential vaccine recipients described immediately below.

Conditions Designed to Ensure that Individuals to Whom the Product is Administered Are Informed. DoD will conduct an educational and information program under appropriate conditions designed to ensure that individuals to whom AVA is administered are informed:

(1) that FDA has authorized the emergency use of AVA for preventing inhalation anthrax;

(2) of the significant known and potential benefits and risks of the emergency use of AVA, and of the extent to which such benefits and risks are unknown; and

(3) of the option to accept or refuse administration of AVA; of the consequences, if any, of refusing administration of the product; and of the alternatives to AVA that are available, and of their benefits and risks.

With respect to condition (3), above, relating to the option to accept or refuse administration of AVA, the AVIP will be revised to give personnel the option to refuse vaccination. Individuals who refuse anthrax vaccination will not be punished. Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action. Nor would either military or civilian personnel be considered non-deployable or processed for separation based on refusal of anthrax vaccination. There may be no penalty or loss of entitlement for refusing anthrax vaccination.

This information shall read in the trifold brochure provided to potential vaccine recipients as follows:

You may refuse anthrax vaccination under the EUA, and you will not be punished. No disciplinary action or adverse personnel action will be taken. You will not be processed for separation, and you will still be deployable. There will be no penalty or loss of entitlement for refusing anthrax vaccination.

Other information, as outlined in your request, is not a condition of this EUA, but may be provided, including: That unvaccinated people are more vulnerable to lethal anthrax infection; morbidity or mortality due to anthrax could threaten the lives of others in the unit who depend on each other; and anthrax infections could jeopardize the success of the mission. Individuals subject to the vaccination program may be informed that their military and civilian leaders strongly recommend anthrax vaccination, but such individuals may not be forced to be vaccinated. In addition, the issue of mandatory vaccination will be reconsidered by DoD after FDA completes its administrative process, which DoD expects to occur later this year.[10]

As a condition of this authorization, DoD will provide to each potential AVA recipient, prior to vaccination, information that meets the requirements set forth above. FDA has reviewed DoD's trifold brochure, submitted on January 19, 2005, and concludes that this brochure meets such requirements. DoD will obtain FDA's prior approval of any revision to the trifold brochure.

Conditions for the Monitoring and Reporting of Adverse Events Associated with the Emergency Use of AVA. DoD will, as a condition of this authorization, actively encourage health care providers or authorized dispensers and vaccine recipients to report adverse events to the Vaccine Adverse Events Reporting System (VAERS). In addition, we understand that DoD will conduct systematic monitoring of the health of recipients of AVA, e.g., cohort studies using the Defense Medical Surveillance System databases of active-duty military personnel; such monitoring is not a condition of this authorization.

Conditions Concerning Recordkeeping and Reporting, Including Records Access by FDA. DoD will, as a condition of authorization, record in individual medical records, including electronic immunization tracking systems, the names of individual recipients of AVA and the dates of vaccination. DoD will provide FDA access to such records.

Advertising and Promotional Descriptive Printed Matter. FDA has the authority, under section 564(e)(4) of the Act to establish conditions on advertisements and other promotional descriptive printed matter that relate to the emergency use of AVA under this authorization. As a condition of this EUA, all advertising and promotional descriptive printed matter relating to the use of AVA shall be consistent with the trifold as well as the standards and requirements set forth in this authorization.

V. Duration of Authorization

This EUA will be effective for 6 months from the date of issuance. However, this EUA may be extended within the duration of the declaration of emergency if the criteria under section 564(c) of the Act for issuance of such

[10] *See* Section I of this authorization.

authorization are still met. Moreover, the EUA will cease to be effective when the declaration of emergency is terminated under section 564(b) of the Act or the EUA is revoked under section 564(g) of the Act.

Thank you in advance for your cooperation in implementing this EUA.

Sincerely,

Lester M. Crawford, D.V.M., Ph.D.

Dated: January 28, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2028 Filed 1–31–05; 11:39 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in February 2005.

A portion of the meeting will be open and will include a roll call, general announcements, Director's and Administrator's Reports, as well as presentations and discussions about Mental Health System Transformation.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed below as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

The meeting also will include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2 Section 10(d).

Substantive program information, and a roster of Council members may be obtained by accessing the SAMHSA Advisory Committee website (*http://www.samhsa.gov*) or by communicating with the contact whose name and telephone number are listed below. A summary of the meeting and the transcript for the open session will also be available on the SAMHSA Advisory Committee Web site as soon as possible after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council.

Meeting Date: February 16–17, 2005.

Place: Sugarloaf Room, 1 Choke Cherry Road, Rockville, MD 20857.

Type: Open: February 16, 2005, 9 a.m.—5 p.m.; February 17, 2005, 9:30 a.m.—1 p.m.

Closed: February 17, 2005, 9 a.m.—9:30 a.m.

Contact: Diane Abbate, MA, Acting Executive Secretary, 1 Choke Cherry Road, Room 6–1075, Rockville, Maryland 20857. Telephone: (240) 276–1830, and FAX (240) 276–1850. E-mail: *dabbate@hhs.samhsa.gov.*

Dated: January 26, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–1923 Filed 2–1–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on an existing information collection requirement, abstracted below, that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by April 4, 2005.

ADDRESSES: Comments to be delivered to Katrina Wawer, Information Collection Specialist, TSA Headquarters, East Tower, Floor 7, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; facsimile (571) 227–2594; email *katrina.wawer@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist (571) 227–1995.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of the specified information collection for renewal, TSA solicits comments in order to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology where appropriate.

1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking to renew information collection request number 1652–0028 to continue compliance with statutory mandate. Section 603 of Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176, requires TSA to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation. TSA collects limited biographical information from flight crew members to confirm their eligibility for training. TSA also asks participants to complete an anonymous and voluntary evaluation form after the training is completed to assess the quality of the training. TSA requests this renewal to continue confirming participants' eligibility and attendance for the training program, as well as to continue to assess training quality. The estimated number of annual respondents is 3,000 and estimated annual burden is 750 hours. There is no estimated annual cost burden to respondents.

The approval of this information collection expires on April 30, 2005.

Issued in Arlington, Virginia, on January 25, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–1926 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information; Airport Security

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: TSA invites public comment on a currently approved public information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by April 4, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone at 571–227–1995.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

1652–0002, Airport Security, 49 CFR part 1542. The Federal Aviation Administration (FAA) initially required this collection under 14 CFR part 107 (now 49 CFR part 1542) and cleared under OMB control number 2120–0656. The responsibility for the collection has been transferred to TSA from FAA and assigned OMB control number 1652–0002. Part 1542, Airport Security, implements the provisions of the Aviation Security Improvement Act and the Aviation and Transportation Security Act, as amended, that relates to the security of persons and property at airports operating in commercial air transportation. TSA is seeking renewal of this information collection because airport security programs are needed to ensure protection of persons and property in air transportation against acts of terrorism, to ensure passenger screening procedures are effective, and that information is available to comply with Congressional reporting requirements. The affected public is an estimated 445 regulated airport operators. The current estimated annual burden is 509,203 hours annually.

Issued in Arlington, Virginia January 28, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–1927 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Consultation on Proposed Self-Determination and Self-Governance Funding Agreement Language on Fiduciary Trust Records Management

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of tribal consultation meeting.

SUMMARY: This notice announces three consultation meetings that will be held to obtain oral and written comments concerning (1) a proposed policy on fiduciary trust records management for Self-Determination (Title I) and Self-Governance (Title IV) Tribes/Consortia; and (2) proposed language to be negotiated as part of the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management. These meetings support the Department of the Interior's (Department's) administrative policy on tribal consultation by encouraging maximum direct participation of representatives of tribal governments, tribal organizations and other interested persons on important Departmental issues and processes.

In developing the proposed policy and language, the Department had pre-scoping telephone conversations with tribal leaders and staff; held a scoping meeting as part of a 2-day conference on Indian trust records management; formed a Tribal Fiduciary Trust Records Management Workgroup; held four workgroup meetings; transmitted a tribal leader letter soliciting comments on the proposed policy language to be presented for consultation; and engaged in discussions with tribal leaders and staff at the Fall Self-Governance Conference. The proposed policy and language incorporates many valuable comments received to date. The upcoming consultation will provide another opportunity for Indian tribes and interested parties to comment on proposed federal policy and funding agreement language regarding fiduciary trust records management for Title I and Title IV Tribes/Consortia.

Once final decisions are made regarding the policy and the funding agreement language, guidance will be provided to the Director, Bureau of Indian Affairs and the Director, Office of Self-Governance and Self-Determination regarding language to be negotiated as part of the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management.

DATES: The following three consultation meetings will be held:

1. March 2, 2005, 9 a.m. to 1 p.m., Portland, Oregon.
2. March 3, 2005, 9 a.m. to 1 p.m., Phoenix, Arizona.
3. March 9, 2005, 9 a.m. to 1 p.m., Nashville, Tennessee.

Written comments should be postmarked or faxed no later than March 11, 2005.

ADDRESSES: The meeting locations are:

1. Portland—Red Lion Portland Convention Center, 1021 NE. Grand Avenue, Portland, Oregon; telephone: (503) 235–2100.
2. Phoenix—Hilton Phoenix Airport, 2435 South 47th Street, Phoenix, Arizona; telephone: (480) 894–1600.
3. Nashville—DoubleTree Hotel Nashville—Downtown, 315 4th Avenue North, Nashville, Tennessee; telephone: (615) 747–8200.

Written comments may be mailed to William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Mail Stop 4618–MIB, 1849 C Street, NW., U.S. Department of the Interior, Washington, DC 20240. Postmark must be no later than March 11, 2005. Comments may also be faxed to William A. Sinclair at (202) 219–1404 no later than March 11, 2005.

FOR FURTHER INFORMATION CONTACT: William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Mail Stop 4618–MIB, 1849 C Street, NW., U.S. Department of the Interior, Washington, DC 20240; telephone: (202) 219–0244

SUPPLEMENTARY INFORMATION: The purpose of these consultation meetings is to provide Indian Tribes/Consortia and other interested parties with opportunities to consult on the proposed Department's policy on fiduciary trust records management regarding Title I and Title IV Tribes/Consortia and on proposed language to be negotiated as part of the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management. The policy and language are being formulated to assure fulfillment of the United States' trust responsibility (1) to protect and preserve fiduciary trust records for tribal and individual Indian trust assets and (2) to confirm protection and beneficial use of Indian trust assets given the United States' trust responsibility for the trust assets being managed by Tribes/Consortia under Title I/Title IV funding agreements.

The proposed Department's Policy on Fiduciary Trust Records Management for Title I and Title IV Tribes/Consortia follows:

Preamble: The purpose of this fiduciary trust records policy is to create a partnership regarding fiduciary trust records management between Title I and Title IV Tribes/Consortia and the U.S. Department of the Interior (Department) so that Tribes/Consortia can continue to carry out their inherent governmental responsibilities and so that the Secretary of the Interior (Secretary) can fully discharge her responsibility as the trustee-delegate. This policy recognizes that Title I and Title IV Tribes/Consortia, as sovereign governments, are responsible for enhancing and protecting tribal resources to support the well being of their constituents and for fulfilling the requirements of their Title I and Title IV funding agreements. This policy recognizes that the Department has delegated non-inherent federal trust activities to Tribes and will assist, coordinate with and support Tribes/Consortia as both governments carry out this policy.

Policy Statement: The Secretary of the Interior (Secretary) must preserve, protect and manage all fiduciary trust records for the tribal and individual Indian trust assets that the Department manages as defined in footnote 2 on the decision flow chart. When Tribes/Consortia assume a fiduciary trust program, service, function or activity, or portion thereof, under Title I or Title IV funding agreements, they too must preserve, protect and manage all fiduciary trust records (as defined in footnote 2 on the decision flow chart), regardless of the source of funds used to generate the fiduciary trust records. This policy does not add any record keeping requirements on Tribes/Consortia. Except for the information that Tribes/Consortia must maintain pursuant to statutes and regulations, Tribes/Consortia are allowed to create those records they deem necessary to implement the trust programs assumed under Title I or Title IV funding agreements. These tribally created or maintained fiduciary trust records are permanent records and shall not be destroyed. With the exception of those fiduciary trust records submitted to the Secretary as part of a trust transaction decision, such records remain in the legal custody of the Tribe/Consortium and are not subject to the Freedom of Information Act (FOIA). The American Indian Records Repository (AIRR) in Lenexa, Kansas, is available to store all fiduciary trust records, including those from a Tribe/Consortium that no longer wishes to store its fiduciary trust records onsite or near the reservation. These records, when housed in the AIRR, will remain in the Tribe's/Consortium's legal custody.

The Secretary shall have reasonable access to the fiduciary trust records maintained by the Tribe/Consortium. The Secretary shall give reasonable oral or written advance request for access. Access shall include visual inspection and the production of copies as necessary and shall not include the involuntary removal of the records.

Decision Flow Chart: The flow diagram entitled ''Is it a fiduciary trust record?'' follows:

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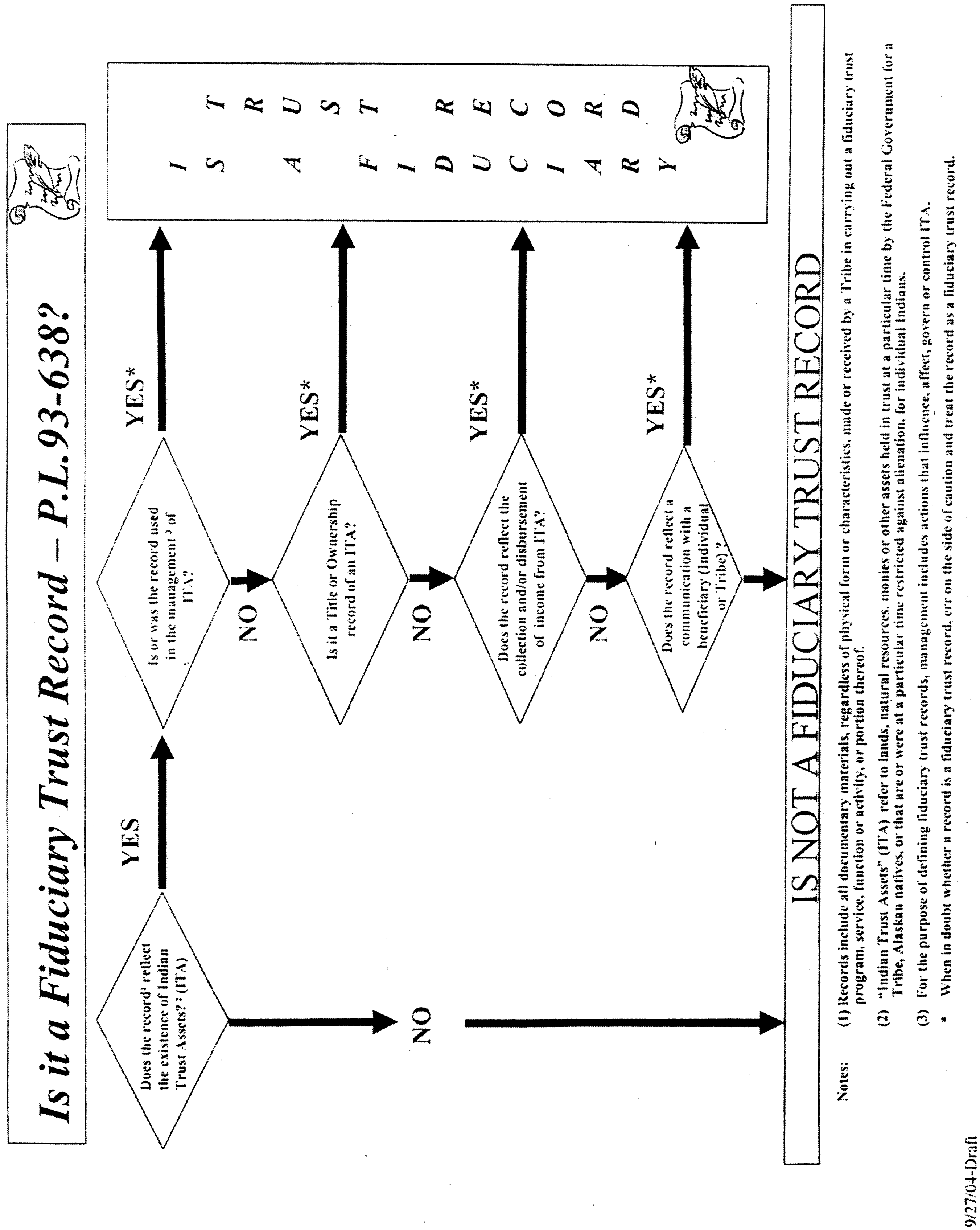

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The following language is proposed to be negotiated as part of the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management:

The Tribe/Consortium and Secretary agree to implement the Policy on Fiduciary Trust Records Management for Title I and Title IV Tribes/Consortia by working cooperatively in records creation, maintenance and disposition and training activities.

The Tribe/Consortium agrees to:

(a) Preserve, protect and manage all fiduciary trust records, as defined in the Secretary of Interior's Policy on Fiduciary Trust Records Management for Title I and Title IV Tribes/Consortia created and maintained by Tribes/Consortia during their management of trust programs in their Title I/Title IV agreements;

(b) Make available to the Secretary all fiduciary trust records maintained by the Tribe/Consortium, provided that the Secretary gives reasonable oral or written advance request to the Tribe/Consortium. Access shall include visual inspection and the production of copies as necessary and shall not include the involuntary removal of the records; and

(c) Store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the Tribe/Consortium.

The Secretary agrees to:

(a) Allow the Tribe/Consortium to determine what records it maintains to implement the trust program assumed under a Title I or Title IV agreement except it must maintain the information required by statute and regulation;

(b) Store all inactive fiduciary trust records at AIRR at no cost to the Tribe/Consortium when the Tribe/Consortium no longer wishes to keep the records. Further, the Tribe/Consortium will retain legal custody and determine access to these records;

(c) Work with the Tribe/Consortium on a tribal storage and retrieval system for fiduciary trust records stored at AIRR; and

(d) Provide technical and financial assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.

Dated: January 26, 2005.

Abraham E. Haspel,

Assistant Deputy Secretary—Office of the Secretary.

[FR Doc. 05–1869 Filed 2–1–05; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of Lesser Long-nosed Bat, Black-capped Vireo, Yuma Clapper Rail, Pima Pineapple Cactus, Gypsum Wild-Buckwheat, Mesa Verde Cactus, and Zuni Fleabane

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), the black-capped vireo (*Vireo atricapilla*), the Yuma clapper rail (*Rallus longirostris yumanensis*), Pima pineapple cactus (*Coryphantha sheeri* var. *robustispina*), gypsum wild-buckwheat (*Erigonum gypsophilum*), Mesa Verde cactus (*Sclerocactus mesae-verde*), and Zuni fleabane (*Erigeron rhizomatus*) under the Endangered Species Act of 1973 (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.12) is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow adequate time to conduct this review, information submitted for our consideration must be received on or before May 3, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information submitted on these species should be sent to the U.S. Fish and Wildlife Service at the following addresses. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

Information regarding the lesser long-nosed bat, Yuma clapper rail, and Pima pineapple cactus should be sent to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.

Information regarding the black-capped vireo should be sent to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Ecological Services, 711 Stadium Drive, Suite 252, Arlington, TX 76011.

Information regarding gypsum wild-buckwheat, Mesa verde cactus, and Zuni fleabane should be sent to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: For the lesser long-nosed bat, contact Scott Richardson at the U.S. Fish and Wildlife Service Arizona Ecological Services Tucson Sub-Office, 201 North Bonita, Suite 141, Tucson, AZ 84745, 520–670–6150 x 242, *scott_richardson@fws.gov.* For the Pima pineapple cactus, contact Mima Falk at Tucson Sub-Office address above, 520–670–6150 x 225, *mima_falk@fws.gov.* For the black-capped vireo, contact Omar Bocanegra at the U.S. Fish and Wildlife Service, Ecological Services Field Office, 711 Stadium Drive, Arlington, TX 76011, 817–277–1100, *omar_bocanegra@fws.gov.* For the Yuma clapper rail, contact Lesley Fitzpatrick at the U.S. Fish and Wildlife Service Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021, 602–242–0210 x 236, *lesley_fitzpatrick@fws.gov.* For the gypsum wild-buckwheat, Mesa Verde cactus, and Zuni fleabane, contact Nancy Baczek at the New Mexico Ecological Services Field Office, 2105 Osuna Road, NE, Albuquerque, NM 87113, 505–761–4711, *nancy_baczek@fws.gov.*

SUPPLEMENTARY INFORMATION:

Why Is a 5-Year Review Conducted?

Section 4(c)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List of Endangered and Threatened Wildlife and Plants (delisted), or reclassified from endangered to threatened (downlisted) , or from threatened to endangered (uplisted). The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the following species since their original listings as either endangered (lesser long-nosed bat, black-capped vireo, Yuma clapper rail, and Pima pineapple cactus) or threatened (gypsum wild-buckwheat, Mesa Verde cactus, and Zuni fleabane).

If the present classification of any of these species is not consistent with the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in the Federal classification of that species. Any change in Federal classification would require a separate final rule-making process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the lesser long-nosed bat, black-capped vireo, Yuma clapper rail, Pima pineapple cactus, gypsum wild-buckwheat, Mesa Verde cactus, and Zuni fleabane.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Specific Information Requested for the Lesser Long-Nosed Bat

We are especially interested in the results of survey and monitoring efforts that provide a better understanding of current population numbers and the status, security, and location of roost sites in the U.S. and Mexico. We also specifically request any recent information regarding the impacts of agave plant harvest and/or livestock grazing on the numbers and distribution of agaves and associated impacts on forage availability for lesser long-nosed bats.

Specific Information Requested for the Black-Capped Vireo

We are especially interested in the following information: (1) Distribution of populations and suitable habitat across the breeding range and the degree of protection afforded these populations and habitat; (2) evaluation of the viability of breeding populations; (3) the distribution of wintering populations and evaluation of the extent and security of wintering habitat in Mexico; and (4) short- and long-term effects of various management activities on vireo populations and breeding habitat, including brown-headed cowbird control, brush management, prescribed fire, and livestock grazing.

Specific Information Requested for the Yuma Clapper Rail

We specifically request information regarding the distribution of listed populations and evaluation of the degree of habitat protection for each population, and information regarding management plans and techniques for maintaining clapper rail habitat. We also are particularly interested in recent information regarding the effects of selenium on clapper rail reproductive success.

Special Consideration of a Taxonomic Question Regarding the Pima Pineapple Cactus

Two studies of character variation within the species *Coryphantha robustispina* have recently become available to us: One was recently published by Schmalzel *et al.* (2004), and the other is a report by Baker (2004) of Arizona State University regarding a study carried out under our cooperative agreement with the Arizona Department of Agriculture under section 6 of the Endangered Species Act. These two studies reach different conclusions concerning the taxonomic validity of the Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*)).

We have carefully reviewed both reports and have identified several technical issues on which we are particularly soliciting review and comment by knowledgeable experts during this status review of the Pima pineapple cactus.

Schmalzel *et al.* (2004) concluded that their data suggest that the Pima pineapple cactus, a listed variety of *C. robustispina* (based on Taylor (1998) nomenclature), is not a valid taxonomic entity, and therefore does not meet the definition of ''species'' under the Act. They based this conclusion on (1) clinal variation in certain characters from west to east, and (2) overlap in characters between the populations of *C. robustispina*.

The term ''clinal'' comes from ''cline,'' which is a gradation in measurable characters (Huxley 1938). The existence of clinal patterns in characters within a species can be compatible with recognition of taxa (named units) below the level of species (infra-specific taxa). Julian Huxley (1938) first proposed the term ''cline'' as ''an auxiliary taxonomic principle,'' and observed that clines could be intragroup, or within a population, or intergroup, as in ''connecting the mean values of the subspecies of a polytypic species.'' The plant varieties recognized as valid for listing under the ESA are biologically equivalent to subspecies (USFWS 1978). We seek comment and additional information regarding the conclusions of Schmalzel *et al.* (2004) with regard to clinal variation in *C. robustispina*.

Regarding overlap in characters, Schmalzel *et al.* interpret their principle components analysis as demonstrating overlap in geographic groups of *C. robustispina*, and suggest this overlap is further evidence that the varieties are not distinct. The morphometric analysis provided by Schmalzel *et al.* (2004) did not include four of the characters (stem branching and three floral characters) identified by Benson (1982) for distinguishing varieties of *C. robustispina*, although a general narrative discussion of those characters was provided. We seek comment on their conclusions with regard to character overlap and the implications of not including the characters identified by Benson (1982) in the analysis.

Baker (2004) assessed character variation in *C. robustispina* with respect to the three recognized varieties, including the Pima pineapple cactus. Baker (2004) included stem branching in his study, but did not include floral characters. Baker's ongoing research will address floral characters, to be completed in 2005. To date, Baker has found statistically significant differences among the named varieties for most characters, although Pima pineapple cactus did not significantly differ from the variety that was closest geographically in two of the characters (radial spine length and central spine curvature) used by Benson (1982) to distinguish varieties of *C. robustispina*.

The plots of Baker's (2004) principal components analysis show points corresponding to the Pima pineapple cactus to be largely separate from, but having some overlap with, points representing *Coryphantha robustispina uncinata*, the variety geographically nearest to the Pima pineapple cactus. The amount of overlap appears to be at least grossly comparable to the corresponding amount in Fig. 10 of Schmalzel *et al.* (2004). Baker's (2004) discriminant function analysis showed that the character data correctly identified individuals of *C. robustispina* from Pima and Santa Cruz Counties, Arizona, as Pima pineapple cactus 92.3 percent of the time. Baker (2004) concluded that, based on the allopatry (disjunct geographic distributions) and observed morphological separation of the varieties, all three varieties of *C. robustispina* are taxonomically valid.

Stebbins (1950 provided the following definition for the term subspecies: ''The subspecies or geographic variety is a series of populations having certain morphological and physiological characteristics in common, inhabiting a geographic subdivision of the range of the species or a series of similar ecological habitats, and differing in several characteristics from typical members of other subspecies, although connected with one or more of them by series of intergrading forms.'' Stuessy's (1990) general standards for recognition of plant subspecies or varieties are consistent with Stebbins' definition. Stuessy states that plant subspecies are largely allopatric (occupying geographically different areas), but allows for some degree of contact, hybridization, and overlap.

The taxonomic question that we must evaluate in the present status review is whether the observed amount of overlap in characters between Pima pineapple cactus and other varieties of *C. robustispina* is acceptable for continued recognition of the Pima pineapple cactus as a valid taxon. It appears to us that the two studies summarized in this notice generally agree in the gross amount of overlap (although it was not quantified by Schmalzel *et al.* 2004) but disagree in the taxonomic significance of that overlap.

We are soliciting review and comment on any issue related to the listed status of the Pima pineapple cactus in order to determine whether its continued listing under the Act is justified. If the best available scientific and commercial information indicates that the Pima pineapple cactus is not a valid taxon, we will develop a proposal to remove it from the List of Endangered and Threatened Wildlife and Plants. It is therefore important that we have a full understanding of current concepts and standards of plant taxonomy as they apply to the taxonomic standing of the Pima pineapple cactus to ensure that our decision is based on the best available information. Other issues on which we would like comment are the use of herbarium specimens for this type of work, and the appropriate sample size for evaluating differences within populations and between varieties. Given the different taxonomic conclusions of the two recent studies, we are particularly soliciting review and comment by knowledgeable experts in multivariate methods and plant taxonomy on the two studies summarized in this notice and identification of the taxonomic issues that we have provided.

A copy of Baker's study is available on our Web site at: *http://southwest.fws.gov/*. The citation for the study by Schmalzel *et al.* (2004) is provided below.

Literature Cited

Baker, Marc. 2004. Phenetic analysis of *Coryphantha*, section *Robustispina* (Cactaceae), part 1: stem characters. Section 6 Grant Report, 4 May 2004.

Benson, L. 1982. The Cacti of the United States and Canada. Stanford University Press, Stanford, California.

Huxley, J. 1938. Clines: an auxiliary taxonomic principle. Nature 3587:219–220.

Schmalzel, R. J., R. T. Nixon, A. L. Best, J. A. Tress, Jr. 2004. Morphometric variation in *Coryphantha robustispina* (Cactaceae). Systematic Botany 29(3):553–568.

Stebbins, G. L. 1950. Variation and Evolution in Plants. Columbia University Press, NY. 643 pp.

Stuessy, T. F. 1990. Plant Taxonomy; The Systematic Evaluation of Comparative Data. Columbia University Press, New York. 514 pp.

USFWS (U.S. Fish and Wildlife Service). 1978. Determination that 11 plant taxa are endangered species and 2 plant taxa are threatened species. **Federal Register** 43(81):17910–17916; April 26, 1978.

How Are Lesser Long-Nosed Bat, Black-Capped Vireo, Yuma Clapper Rail, Pima Pineapple Cactus, Gypsum Wild-Buckwheat, Mesa Verde Cactus, and Zuni Fleabane Currently Listed?

The List of Endangered and Threatened Wildlife and Plants (List) is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register**. The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*. In Table 1 below, we provide a summary of the listing information for the species under active review.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR LESSER LONG-NOSED BAT, YUMA CLAPPER RAIL, PIMA PINEAPPLE CACTUS, GYPSUM WILD-BUCKWHEAT, MESA VERDE CACTUS, AND ZUNI FLEABANE

Common name	Scientific name	Status	Where listed	Final listing rule
Lesser long-nosed bat	*Leptonycteris curasoae yerbabuenae* [1].	Endangered	Across species range (U.S.A., Mexico, Central America).	53 FR 38456, (30–SEP–1988).
Black-capped vireo	*Vireo atricapilla* [2]	Endangered	U.S.A. (Kansas, Oklahoma, Texas, Mexico) [3].	52 FR 37420, (6–OCT–1987).
Yuma clapper rail	*Rallus longirostris yumanensis*.	Endangered	U.S.A (Arizona, California)	32 FR 4001, (11–MAR–67).
Pima pineapple cactus	*Coryphantha scheeri var robustispina*.	Endangered	Across species range (southern Arizona and northern Sonora, Mexico).	58 FR 49875, (25–OCT–93).
Gypsum wild-buckwheat	*Erigonum gypsphilum*	Threatened with Critical Habitat.	Across species range (Eddy County, New Mexico).	46 FR 5730, (19–JAN–81).
Mesa Verde cactus	*Sclerocactus mesae-verdae*.	Threatened	Across species range (southwest Colorado, northwest New Mexico, northeast Arizona).	44 FR 62471, (30–OCT–79).

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR LESSER LONG-NOSED BAT, YUMA CLAPPER RAIL, PIMA PINEAPPLE CACTUS, GYPSUM WILD-BUCKWHEAT, MESA VERDE CACTUS, AND ZUNI FLEABANE—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Zuni fleabane	*Erigeron rhizomatus*	Threatened	Across species range (Arizona and New Mexico).	50 FR 16680, (26–APR–85).

[1] Synonyms for this species include *L. sanborni*, *L. nivalis sanborni*, *L. yerbabunae*, and *L. curasoae*.
[2] The scientific name of this species has recently been changed from *V. atricapillus* to *V. atricapilla* (Dave, N. and M. Gosselin. 2002. Gender agreement of the avian species names. Bull. Brit. Orn. Club 122: 14–49).
[3] We believe the table concluding the Final Rule for the black-capped vireo erroneously included Nebraska and Louisiana as part of the historic range of the species.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning lesser long-nosed bat, black-capped vireo, Yuma clapper rail, Pima pineapple cactus, gypsum wild-buckwheat, Mesa Verde cactus, or Zuni fleabane indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) remove the species from the List. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

Public Solicitation of New Information

We request any new information concerning the status of lesser long-nosed bat, black-capped vireo, Yuma clapper rail, Pima pineapple cactus, gypsum wild-buckwheat, Mesa Verde cactus, and Zuni fleabane. See ‘‘What information is considered in the review?’’ heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 16, 2004.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 05–1924 Filed 2–1–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Adult Education Annual Report Form, OMB Control No. 1076–0120, requires renewal. The information collection requirement, with no appreciable changes, is submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 4, 2005.

ADDRESSES: Comments are to be sent to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior. Comments may be sent via facsimile to (202) 395–6566 or you may send e-mail to: *OIRA_DOCKET@omb.eop.gov.* Copies of comments should be sent to Edward Parisian, Acting Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 3609–MIB, Washington, DC 20240, or hand delivered to room 3609 at the above address.

FOR FURTHER INFORMATION CONTACT: Garry Martin, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for adult education programs in accordance with 25 CFR 46, subpart A, sections 46.20 Program Requirements and 46.30

Records and Reporting Requirements of the Adult Education Program.

We did not receive any comments on our **Federal Register** notice of November 15, 2004 (69 FR 65628). You may still send comments on this collection of information to the Office of Information and Regulatory Affairs, OMB at the address listed in **ADDRESSES** section. Please send copies of these comments to the Director of the Office of Indian Education Programs at the address listed in the **ADDRESSES** section.

II. Method of Collection

The Adult Education Program regulations under 25 CFR 46, subpart A, contain the program requirements which govern the program. Information collected from the contractors will be used for administrative planning, setting long- and short-term goals, and analyzing and monitoring the use of funds.

III. Data

Title of the Collection of Information: Bureau of Indian Affairs Adult Education Program Annual Report Form.

OMB Control Number: 1076–0120.

Type of Review: Renewal of a currently-approved information collection.

Summary of the Collection of Information: The collection of information provides pertinent data concerning the adult education programs.

Description of the Need for the Information and Proposed Use of the Information: Submission of this information is necessary to assess the need for adult education programs. The information is needed for the utilization and management of program resources to provide education opportunities for adult American Indians and Alaska Natives to complete high school requirements, and to gain new skills and knowledge for individual student self-enhancement. The information collected with the annual report will be used by the Bureau or tribally-controlled programs for fiscal accountability and appropriate direct services documentation. The results of the data are used for administrative planning.

Affected Entities: Tribal adult education contractors.

Estimated Number of Respondents: 70. Respondents are tribal adult education program administrators.

Proposed Frequency of Responses: Annually.

Burden: The estimate of total annual reporting and record keeping burden that will result from the collection of information: Reporting 4 hours per response × 70 respondents = 280 hours.

Estimated Annual Costs: $5,040.00 (4 hours × 70 × $18.00 = salary dollars).

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget Control Number.

Dated: January 26, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 05–1897 Filed 2–1–05; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–05–1910–BJ–5RK4]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of surveys of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs and are necessary for the managements of lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 10, and the survey of the subdivision of section 10, and the metes and bounds survey of certain parcels, Township 1 South, Range 1 West, Wind River Meridian, Wyoming, was accepted January 25, 2005.

The plat and field notes representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 4 West, a portion of the subdivisional lines, and the subdivision of section 3, Township 4 North, Range 4 West, Wind River Meridian, Wyoming, was accepted January 25, 2005.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 15, and the metes and bounds survey of Parcel A, section 15, Township 4 North, Range 4 West, Wind River Meridian, Wyoming, was accepted January 25, 2005.

The plat and field notes representing the dependent resurvey of a portion of the First Standard Parallel North, through Range 4 West, and a portion of the subdivisional lines, and the survey of the subdivision of section 31, and the metes and bounds survey of Parcel A, section 31 Township 5 North, Range 4 East, Wind River Meridian, Wyoming, was accepted January 25, 2005.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, Township 5 North, Range 4 West, Wind River Meridian, Wyoming, was accepted January 25, 2005.

Copies of the preceding described plats and field notes are available to the public at $1.10 each.

Dated: January 26, 2005.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 05–1902 Filed 2–1–05; 8:45 am]

BILLING CODE 4467–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved collection OMB #1024–0018). Comments are invited on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose of the ICR is to nominate properties for listing in the National Register of Historic Places, the official list of the Nation's cultural resources worthy of preservation, which public law requires that the Secretary of the Interior maintain and expand. Properties are listed in the National Register upon nomination by State Historic Preservation Officers and Federal Preservation Officers. Law also requires Federal agencies to request determinations of eligibility for property under their jurisdiction affected by their programs and projects. The forms provide the historic documentation on which decisions for listing and eligibility are based.

DATES: Public comments will be accepted on or before March 4, 2005.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0018), Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or by electronic mail at *oira__docket@omb.eop.gov.* Please also mail or hand carry a copy of your comments to Carol Shull, Keeper of the National Register, National Park Services, 1849 C Street, NW., #2280, Washington, DC 20240. All comments will be a matter of public record.

SUPPLEMENTARY INFORMATION: *Title:* 36 CFR 60 and 63, National Register of Historic Places Registration Form, Continuation Sheet, Multiple Property Documentation Form.

Form: NPS 10–900, –a, –b.

OMB Control Number: 1024–0018.

Type of Request: Extension of a currently approved collection.

Expiration Date: 1/31/2005.

Description of Need: The National Historic Preservation Act requires the Secretary of the Interior to maintain and expend the National Register of Historic Places, and to establish criteria and guidelines for including properties in the National Register. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation. National Register Properties must be considered in the planning for Federal or federally assisted projects. National Register listing is required for eligibility for the Federal rehabilitation tax incentives.

Description of Respondents: The affected public are State, tribal, and local governments, Federal agencies, business, non-profit organizations, and individuals. Nominations to the National Register of Historic Places are voluntary.

Estimated Annual Reporting Burden: 56,700 hours.

Estimated Average Burden Hours Per Response: 36 hours.

Estimated Average Number of Respondents: 1,575.

Estimated Frequency of Response: 1,575 annually.

Dated: January 25, 2005.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. 05–1876 Filed 2–1–05; 8:45 am]

BILLING CODE 4312–51–M

DEPARTMENT OF THE INTERIOR

National Park Service

Advisory Commission Meeting

AGENCY: National Park Service, Jimmy Carter National Historic Site.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act, 5 U.S.C. App. 1, section 10(a)(2), that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held on February 4, 2005, from 8:30 a.m. to 3 p.m. This notice lacks the customary 15-day public notification period due to conflicts with President Carter's schedule.

DATES: February 4, 2005.

Location: The Plains High School, Jimmy Carter National Historic Site, 300 North Bond Street, Plains, Georgia 31780.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, 496 Cemetery Road, Andersonville, Georgia 31711, (229) 924–0343, extension 105.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site. The members of the Advisory Commission are as follows: Dr. James Sterling Young, Dr. Barbara J. Fields, Dr. Donald B. Schewe, Dr. Steven H. Hochman, Dr. Jay Hakes, Director, National Park Service, Ex-Officio member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately four weeks after the meeting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/ or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: January 25, 2005.

Wallace A. Hibbard,

Deputy Regional Director, Southeast Region.

[FR Doc. 05–1877 Filed 2–1–05; 8:45 am]

BILLING CODE 4312–74–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Field Museum of Natural History, Chicago, IL. The human remains were removed from the Crow Reservation, Bighorn County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of Crow Tribe of Montana.

During 1901–1902, human remains representing a minimum of two individuals were obtained from Crow Agency, on the Crow Reservation, Bighorn County, MT, by Stephen C. Simms for the Field Museum of Natural History. Field Museum of Natural History records indicate that Assistant Curator of Anthropology Stephen C. Simms traveled to the Crow Reservation in late December 1901 and early January 1902. No known individuals were identified. No associated funerary objects are present.

The human remains have been identified as Native American based on the specific cultural and geographic attribution in Field Museum of Natural History records. The records identify the human remains as ''Crow'' from Crow Agency, Crow Reservation, MT. Crow descendants in Montana are represented by the present-day Crow Tribe of Montana.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Crow Tribe of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, before March 4, 2005. Repatriation of the human remains to the Crow Tribe of Montana may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: January 11, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–1956 Filed 2–1–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Sonoma County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Lower Lake Rancheria, California; Manchester Band of Pomo Indians of the Manchester–Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

In 1956, human remains representing at least one individual were removed from site CA-Son–5, Sonoma County, CA, by Francis A. Riddell, University of California, Berkeley during archeological fieldwork sponsored by the University of California. The site is an occupation site located on a bluff south of Santa Rosa Creek, within the historic Cabeza de Santa Rosa land grant at Santa Rosa. No known individual was identified. The three associated funerary objects are a stone pestle, a clam shell bead, and an obsidian blade.

The presence of clamshell disc beads with the burial indicates that the burial postdates A.D. 1500.

Based on the manner of burial, the human remains from site CA-Son–5 are determined to be Native American in origin. Site CA-Son–5 is located in a region that has been occupied by Pomo speakers since approximately 5,000 B.C. Based on geographical location, age of the burial, and information provided during consultation, the human remains are culturally affiliated with descendents of the Pomo. The modern day representatives of the Pomo are the

Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Lower Lake Rancheria, California; Manchester Band of Pomo Indians of the Manchester–Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Lower Lake Rancheria, California; Manchester Band of Pomo Indians of the Manchester–Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before March 4, 2005. Repatriation of the human remains and associated funerary objects to the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Lower Lake Rancheria, California; Manchester Band of Pomo Indians of the Manchester–Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cahto Indian Tribe of the Laytonville Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Guidiville Rancheria of California; Hopland Band of Pomo Indians of the Hopland Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria of California; Lower Lake Rancheria, California; Manchester Band of Pomo Indians of the Manchester–Point Arena Rancheria, California; Middletown Rancheria of Pomo Indians of California; Pinoleville Rancheria of Pomo Indians of California; Potter Valley Rancheria of Pomo Indians of California; Redwood Valley Rancheria of Pomo Indians of California; Robinson Rancheria of Pomo Indians of California; Round Valley Indian Tribes of the Round Valley Reservation, California; Scotts Valley Band of Pomo Indians of California; Sherwood Valley Rancheria of Pomo Indians of California; and Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California that this notice has been published.

Dated: December 20, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–1954 Filed 2–1–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains were removed from San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Pala Band of Luiseno Mission Indians of the Pala Reservation, California.

In 1907, human remains representing at least two individuals were removed from an unknown location in northeast San Diego County, CA, by T.T. Waterman and donated to the Phoebe A. Hearst Museum of Anthropology the same year. The site was located on ''Warner's Ranch,'' approximately 5 miles north of the Warner house, and 4 miles northwest of Warner Springs (also known at the time as Warner Hot Springs and as Aqua [sic] Caliente). No known individuals were identified. No associated funerary objects are present.

The village site at Warner's Ranch belonged to the Cupeno Tribe. After eviction by a later owner, the Cupeno, in 1903, were moved to the Pala Reservation where their descendents still live. The Pala Reservation is now known as the Pala Band of Luiseno Mission Indians. The historic era burial practice, the existence of historic textiles, which are integral with the human remains, and the general location indicate that the human remains were Cupeno.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least two individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pala Band of Luiseno Mission Indians of the Pala Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before March 4, 2005. Repatriation of the human remains to the Pala Band of Luiseno Mission Indians of the Pala Reservation, California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Pala Band of Luiseno Mission Indians of the Pala Reservation, California that this notice has been published.

Dated: December 20, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–1955 Filed 2–1–05; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The proposed information collection is a 3-year extension, pursuant to the Paperwork Reduction Act of 1995 (Pub.L. 104–13), of the current ''generic clearance'' (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for a series of import injury investigations that are required by the Tariff Act of 1930 and the Trade Act of 1974, normally in response to petitions from domestic firms. Comments concerning the proposed information collections are requested in accordance with 5 CFR 1320.8(d); such comments are described in greater detail in the section of this notice entitled supplementary information.

DATES: To be assured of consideration, written comments must be received not later than April 1, 2005.

ADDRESSES: Signed comments should be submitted to Marilyn Abbott, Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collections and draft Paperwork Reduction Act Submission and Supporting Statement to be submitted to the Office of Management and Budget may be obtained from: Debra Baker, Office of Investigations, U.S. International Trade Commission (telephone no. (202) 205–3180; e-mail *address-Debra.Baker@usitc.gov*). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The draft Supporting Statement is also on the Commission's Web site (at *http://info.usitc.gov/OINV/INVEST/OINVINVEST.NSF*).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other technological forms of information technology, *e.g.*, permitting electronic submission of responses).

Summary of the Proposed Information Collections

(1) Need for the Proposed Information Collections

The information requested in the questionnaires and five-year sunset review institution notices is for use by the Commission in connection with the following statutory investigations: antidumping duty, countervailing duty, escape clause, North American Free Trade Agreement (NAFTA) safeguard, market disruption, and interference-with-programs of the U.S. Department of Agriculture (USDA). The Commission's generic clearance to issue questionnaires will not apply to repetitive questionnaires such as those issued on a quarterly or annual basis or to other investigations and research studies conducted under section 332 of the Trade Act of 1974.

Data received in response to the questionnaires issued under the terms of the proposed generic clearance are consolidated in the form of a staff report. In addition, in the majority of its investigations, the Commission releases completed questionnaires returned by industry participants to representatives of parties to its investigations under the terms of an administrative protective order, the terms of which safeguard the confidentiality of any business proprietary or business confidential information. Representatives of interested parties also receive a confidential version of the staff report under the administrative protective order. Subsequent party submissions to the Commission for specific proceedings are based, in large part, upon their review of the information collected by the Commission. The information provided by firms in response to the questionnaires constitutes a major portion of the statistical base for the Commission's determinations.

Publicly-available data are utilized where possible by the Commission. However, the use of questionnaires is generally the most expedient and valid method of obtaining record data due to the requirement for comparability in measurement for production (both domestic and foreign), import, and purchase data as well as for timeliness and due to the frequent need to evaluate the individual operations of firms within an industry. Included in the proposed generic clearance are the institution notices for the five-year reviews of antidumping and countervailing duty orders and suspended investigations. Responses to the institution notices will be evaluated by the Commission and form much of the record for its determination to conduct either an expedited or full review.

(2) Information Collection Plan

Questionnaires for specific investigations are sent to all identified domestic producers manufacturing the product(s) in question. Importer and purchaser questionnaires are also sent to all significant importers/purchasers of the product(s). Finally, all foreign manufacturers of the product(s) in question that are represented by counsel are sent questionnaires, and, in addition, the Commission attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and/or other for-profit institutions; responses are mandatory.

The institution notices for the five-year reviews are published in the **Federal Register** and solicit comment from interested parties (i.e., U.S. producers within the industry in question as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

(3) Description of the Information To Be Collected

Although the content of each questionnaire will differ based on the needs of a particular investigation, questionnaires are based on long-established, generic formats. Producer questionnaires generally consist of the following four parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on capacity, production, inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the product in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. (Questionnaires may, on occasion, also contain part V, an abbreviated version of the above-listed parts, used for gathering data on additional product categories.)

Importer questionnaires generally consist of three parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the producer questionnaire.

Purchaser questionnaires generally consist of five parts: (Part I) general questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm; (part III) market characteristics and purchasing practices; (part IV) comparisons between imported and U.S.-produced product; and (part V) actual purchase prices for specific types of domestic and subject imported products and the names of the firm's vendors.

Foreign producer questionnaires generally consist of (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and may include (part III) market factors.

The notices of institution for the five-year reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

The Commission solicits input from petitioners and other potential recipients when preparing questionnaires for individual investigations to ensure that the questions are succinct and relevant to the investigation and that the scope of the information request is streamlined to the extent feasible. Further, the Commission has formalized the process where interested parties comment on data collection and draft questionnaires in final phase countervailing duty and antidumping investigations (and 5-year full reviews). Interested parties are provided approximately 2 weeks to provide comments to the Commission on the draft questionnaires.

(4) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 173,000 burden hours on 4,300 respondents (i.e., recipients that provide a response to the Commission's questionnaires or the notices of institution of five-year reviews). Table 1 lists the projected annual burden for each type of information collection for the period July 2005–June 2008:

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2005–JUNE 2008

Item	Producer questionnaires [1]	Importer questionnaires [2]	Purchaser questionnaires [3]	Foreign producer questionnaires [4]	Institution notices for 5-year reviews [5]	Total
	Estimated burden hours imposed annually for July 2005–June 2008					
Number of respondents	952	1,370	1,070	814	61	4,267
Frequency of response	1	1	1	1	1	1
Total annual responses	952	1,370	1,070	814	61	4,267

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2005–JUNE 2008—Continued

Item	Producer questionnaires [1]	Importer questionnaires [2]	Purchaser questionnaires [3]	Foreign producer questionnaires [4]	Institution notices for 5-year reviews [5]	Total
Hours per response	52.7	38.5	26.3	50.6	14.8	40.6
Total hours	50,170	52,745	28,141	41,188	904	173,148

[1] *Producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 91 percent of the total producer questionnaire burden (48.0 hours per response), outside review burden accounts for 6 percent of the total burden, and third-party disclosure burden accounts for the remaining 3 percent. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[2] *Importer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of importer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 98 percent of the total importer questionnaire burden (37.7 hours per response), outside review burden and third-party disclosure burden each account for about 1 percent of the total burden. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[3] *Purchaser questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of purchaser respondents per case) and hours per response (responding firm burden). See definitions below. Purchasers are not interested parties to investigations by statute and typically do not engage outside counsel. Therefore, there is minimal outside review burden nor third-party disclosure burden for purchasers.

[4] *Foreign producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of foreign producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 62 percent of the total foreign producer questionnaire burden (31.4 hours per response), outside review burden accounts for another 20 percent, and third-party disclosure burden accounts for 18 percent of the total burden.

[5] *Institution notices for 5-year reviews.*—Estimates based upon the following variables: anticipated five-year review caseload, number of respondents to each notice, and responding firm burden.

Note.—Above estimates *include* questionnaires for specific investigations where the mailing list consists of fewer than 10 firms. In such instances the majority or all firms within the industry under investigation may be said to receive questionnaires. According to the Paperwork Reduction Act of 1995, sbull l11"(a)ny collection of information addressed to all or a substantial majority of an industry is presumed to involved ten or more persons."

DEFINITIONS

Anticipated caseload.—Derived from current Commission budget estimates.

Number of respondents per case.—Defined as the number of firms which return *completed* (see note 3 to table 3) questionnaires to the Commission. Current estimates of "number of respondents per case" for the questionnaires were derived, in part, from the number of respondents to Commission questionnaires that were issued under the current generic clearance.

Responding firm burden.—Defined as the time required by the firm which received the questionnaire to review instructions, search data sources, and complete and review its response. Commission questionnaires do not impose the burden of developing, acquiring, installing and utilizing technology and systems, nor require adjusting existing methodology or training personnel. Current estimates of "responding firm burden" for the questionnaires were derived, in part, from the actual burden reported by firms that responded to Commission questionnaires issued under the current generic clearance.

Outside review burden.—Time devoted by outside legal and financial advisors to reviewing questionnaires completed by the responding firms who are their clients prior to submitting them to the Commission.

Third-party disclosure burden.—Time required for outside legal advisors to serve their clients' questionnaires on other parties to the investigation or review under an administrative protective order.

The Commission further estimates that it costs responding firms $72.27 per burden hour to complete a specific questionnaire issued under the generic clearance. (This estimate is based upon actual costs reported by respondents to questionnaires issued under the current generic clearance.) More complete information concerning costs to respondents, including costs incurred for the purchase of services, and estimates of the annualized cost to the Commission are presented in the draft Supporting Statement available from the Commission. There is no known capital and start-up cost component imposed by the proposed information collections.

(5) Minimization of Burden

The Commission strives to minimize the burden on all questionnaire respondents and takes into account the needs of smaller firms. It periodically reviews its investigative processes, including data collection, to reduce the information burden. In recognition of the limitations of administrative resources or automated record systems, questionnaires clearly state that estimates are acceptable for certain items. They are designed in part with check-in type formats to simplify the response. The reporting burden for smaller firms is reduced in that the sections of the questionnaire that are applicable to their operations are typically more limited. For example, questionnaires are constructed so that meaningful data can be obtained from larger firms with complex business operations; thus, many sections of the questionnaires may not apply to respondents with comparatively simple operations. Requests by parties to expand the data collection or add items to the questionnaire may not be accepted if the Commission believes such requests will increase the response burden while not substantially adding to the investigative record.

The Commission's *collection* of data through its questionnaires does not currently involve the interactive use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Completed questionnaires are almost always returned to the Commission in paper form (including by fax and e-mail). While the Commission has explored the use of alternative methods of submission, it has proved most expedient to use paper copies for a number of reasons. (The draft Supporting Statement available from the Commission addresses this issue in greater detail.) Likewise, it is the Commission's experience that it is most expedient that the information provided in response to its notices of institution for the five-year reviews be submitted in document form directly to its Office of the Secretary.

By order of the Commission.

Issued: January 27, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1952 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 and 731–TA–454 (Second Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 23, 2005. Comments on the adequacy of responses may be filed with the Commission by April 18, 2005. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATES: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 12, 1991, the Department of Commerce issued countervailing duty and antidumping duty orders on imports of fresh and chilled Atlantic salmon from Norway (56 FR 14920, 14921). Following five-year reviews by Commerce and the Commission, effective March 13, 2000, Commerce issued a continuation of the countervailing duty and antidumping duty orders on imports of fresh and chilled Atlantic salmon from Norway (65 FR 13358). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is Norway.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and expedited five-year review determinations, the Commission defined the *Domestic Like Product* as fresh and chilled Atlantic salmon, including salmon smolts.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of fresh and chilled Atlantic salmon, including salmon smolts.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–109, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's*(s')* operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that

product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1944 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–459 (Second Review)]

Polyethylene Terephthalate (PET) Film From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on PET film from Korea.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 23, 2005. Comments on the adequacy of responses may be filed with the Commission by April 18, 2005. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On June 5, 1991, the Department of Commerce issued an antidumping duty order on imports of PET film from Korea (56 FR 25669). The original order was amended pursuant to final court decision on September 26, 1997 (62 FR 50557). Following five-year reviews by Commerce and the Commission, effective March 7, 2000, Commerce issued a continuation of the antidumping duty order on imports of PET film from Korea (65 FR 11984). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and expedited five-year review determinations, the Commission defined the *Domestic Like Product* as all PET film, including equivalent PET film. One Commissioner defined the *Domestic Like Product* differently in the original investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–110, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

PET film, including equivalent PET film. One Commissioner defined the *Domestic Industry* differently in the original investigation.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 18, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1946 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–465, 466, and 468 (Second Review)]

Sodium Thiosulfate from China, Germany, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on sodium thiosulfate from China, Germany, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 23, 2005. Comments on the adequacy of responses may be filed with the Commission by April 18, 2005. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–111, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

www.usitc.gov). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 19, 1991, the Department of Commerce issued antidumping duty orders on imports of sodium thiosulfate from China, Germany, and the United Kingdom (56 FR 6623). Following five-year reviews by Commerce and the Commission, effective March 7, 2000, Commerce issued a continuation of the antidumping duty orders on imports of sodium thiosulfate from China, Germany, and the United Kingdom (65 FR 11985). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, Germany, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and expedited five-year review determinations, the Commission defined the *Domestic Like Product* as all sodium thiosulfate, regardless of form or grade.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of sodium thiosulfate.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from each *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1945 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–376, 563, and 564 (Second Review)]

Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 23, 2005. Comments on the adequacy of responses may be filed with the Commission by April 18, 2005. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On March 25, 1988, the Department of Commerce issued an antidumping duty order on imports of stainless steel butt-weld pipe fittings from Japan (53 FR 9787). On February 23, 1993, the Department of Commerce issued an antidumping duty order on imports of stainless steel butt-weld pipe fittings from Korea (58 FR 11029). On June 16, 1993, the Department of Commerce issued an antidumping duty order on imports of stainless steel butt-weld pipe fittings from Taiwan, as amended (58 FR 33250). Following five-year reviews by Commerce and the Commission, effective March 6, 2000, Commerce issued a continuation of the antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Japan, Korea, and Taiwan (65 FR 11766). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Japan, Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and expedited five-year review determinations, the Commission defined the *Domestic Like Product* as stainless steel butt-weld pipe fittings, co-extensive with Commerce's scope of the subject merchandise.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of stainless steel butt-weld pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 05–5–112, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from each *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of

producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1947 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 104–TAA–7 (Second Review); Investigations Nos. AA1921–198–200 (Second Review)]

Sugar From the European Union; Sugar From Belgium, France and Germany

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on sugar from the European Union, and the antidumping duty orders on sugar from Belgium, France, and Germany.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on sugar from the European Union and the antidumping duty orders on sugar from Belgium, France, and Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On December 6, 2004, the Commission determined that circumstances existed to warrant proceeding with full reviews pursuant to section 751(c)(5) of the Act (69 FR 75568, December 17, 2004). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report—The prehearing staff report in the reviews will be placed in the nonpublic record on June 8, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on June 28, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 21, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations may be required to attend a prehearing conference to be held, if necessary, at 9:30 a.m. on June 23, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 17, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 7, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 8, 2005. On August 5, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 9, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 27, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1953 Filed 2–1–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on December 22, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MESoft, Burbank, CA; and XVUE Ltd., Artemida-Attika, Greece have been added as parties to this venture. Also, Nucoda, London, United Kingdom has withdrawn as a party to this venture. In addition, BBC Technology has changed its name to Siemens Business Services, San Jose, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 17, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 2004 (69 FR 69391).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1989 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American College of Surgeons

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American College of Surgeons (''ACS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission Disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American College of Surgeons, Chicago, IL. The nature and scope of ACS's standards development activities are: Fellowship requirements; statements and guidelines on surgery, surgery practice and surgeon conduct; trauma guidelines, evaluation, management and education relating to trauma; and cancer standards, evaluation, management and education relating to cancer.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1970 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Institute of Timber Construction

Notice is hereby given that, on September 23, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act off 1993, 15 U.S.C. 4301 *et seq.* (''Act''), American Institute of Timber Construction (''AITC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Institute of Timber Construction, Centennial, CO. The nature and scope of AITC's standards development activities are: AITC is the secretariat of a single standard ANSI/AITC A190.1 and maintains the revision of this standard using the ''Procedures for Development of American Standards Institute of Timber Construction Consensus Standards'' approved by the American National Standards Institute on June 6, 2003. The said standard describes the minimum requirements for the production/manufacture of structural glued laminated as well as the quality control system which must be employed by the manufacturer.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1979 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993–American Society of Radiologic Technologists

Notice is hereby given that, on December 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), American Society of Radiologic Technologists (''ASRT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Radiologic Technologists, Albuquerque, NM. The nature and scope of ASRT's standards development activities are: Amending the practice standards for radiologic technologists in the fields of radiography, mammography, computed tomography, magnetic resonance imaging, diagnostic sonography, nuclear medicine, cardiovascular-interventional radiography and radiation therapy. The standards amendment activities will cover defining the scopes of practice in these areas, and delineate practice standards criteria for clinical performance, quality performance, and professional performance. ASRT's standards also include development of new standards for cardio-interventional radiography, vascular-interventional radiography, bone densitometry as well as the practice of radiologist assistants.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1971 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Association of Home Appliance Manufacturers

Notice is hereby given that, on September 10, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Association of Home Appliance Manufacturers (''AHAM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Association of Home Appliance Manufacturers, Washington, DC. The nature and scope of AHAM's standards development activities are: the development and publication of product performance standards for home appliances.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1975 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—ASTM International—Standards

Notice is hereby given that, on October 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International—Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating after July 15, 2004, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone #

610–832–9597, e-mail address: *tobrien@astm.org.*

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1967 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cool Roof Rating Council

Notice is hereby given that, on December 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cool Roof Rating Council (''CRRC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Cool Roof Rating Council, Oakland, CA. The nature and scope of CRRC's standards development activities are: to develop and maintain a roofing produce solar reflectance and thermal emittance (radiative properties) Ratings Program (the standard), which provides for fair, accurate and credible procedures for evaluating and labeling the solar reflectance and thermal emittance (radiative properties) of roofing products, under a strict program administered by the CRRC and to disseminate the information to all interested parties. Program information is available to *http://www/coolroofs.org.*

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1985 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cree, Inc. and Nanocrystal Lighting Corporation Under ATP Award No. 70NANB4H3037

Notice is hereby given that, on November 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C 4301 *et seq.* (''the Act''), Cree, Inc. and Nanocrystal Lighting Corporation under ATP Award No. 70NANB4H3037 (''Joint Venture'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Cree, Inc., Durham, NC; and Nanocrystal Lighting Corporation, Briarcliff Manor, NY. The general area of the Joint Venture's planned activity is to cooperate in performing research in the field of high efficiency solid state lighting. The research will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1968 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Door & Access Systems Manufacturers Association, International

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Door & Access Systems Manufacturers Association, International (''DASMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Door & Access Systems Manufacturers Association, International, Cleveland, OH. The nature and scope of DASMA's standards development activities are: to date, more than fourteen standards for garage doors, rolling doors, fire doors, grilles, counter shutters, sheet doors, high performance doors, garage door and gate operators, and remote controls for garage door and gate operators, many prepared and updated in coordination with the American National Standards Institute.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1978 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 29, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accel Technology Co., Ltd., Osaka, JAPAN; APOS Corporation, Taipei City, TAIWAN; ArcSoft Inc., Fremont, CA; AutoSound Electronic (HK) Limited, Hong Kong, HONG KONG–CHINA; CCE da Amazônia S.A., Sao Paulo, BRAZIL; Citron Electronic Co., Ltd., Hong Kong, HONG KONG–CHINA; Dailystar Technology Limited, Hong Kong, HONG KONG–CHINA; DigiOn, Inc., Fukuoka, JAPAN; Elsässer GmbH, Horb, GERMANY; FLX

Electronics (Shenzhen) Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; G3 Mastering Solutions, Inc., Commerce, CA; Genesis Microchip Inc., Alviso, CA; Lightcomm Technology Co., Ltd., Hong Kong, HONG KONG–CHINA; Marvell International Ltd., Hamilton, BERMUDA; Meiloon Industrial Co., Ltd., Taoyuan City, TAIWAN; Multi-Concept Industrial Ltd., Hong Kong, HONG KONG–CHINA; Nucom Technology Corporation, Taipei, TAIWAN; Paramount Digital Technology (Huizhou) Co., Ltd., Huizhou, PEOPLE'S REPUBLIC OF CHINA; Schotten Glassmastering—an der Heiden GmbH, Schotten, GERMANY; Soaring Technology Co., Ltd., Taipei-Hsien, TAIWAN; Storewell Medial Manufacturing Ltd., Taipei, TAIWAN; Sunext Technology Corporation Limited, Hsin-Chu, TAIWAN; and Zensonic Corporation Pty Ltd., Lonsdale, South Australia, AUSTRALIA have been added as parties to this venture.

Also, Amusewell Technology Corp., Taipei, TAIWAN; Condor CD S.L., Calatayud, SPAIN; L&M Optical Disc West, LLC, Valencia, CPA; Media Solutions, Paris, FRANCE; Shenzhen Paragon Industries (China), Shenzhen Guangdong, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Contel Electronics Technology, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Techsan I&C Co., Ltd., Gyeonggi-Do, REPUBLIC OF KOREA; and Yuxing Electronics Company Limited, Beijing, PEOPLE'S REPUBLIC OF CHINA have withdrawn as parties to this venture. Also, Time Group Ltd. has changed its name to Granville Technology Group Limited, Burnley, Lancashire, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on October 1, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 2004 (69 FR 69393).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1987 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Foundation for the Accreditation of Cellular Therapy

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Foundation for the Accreditation of Cellular Therapy ("FACT") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Foundation for the Accreditation of Cellular Therapy, Omaha, NE. The nature and scope of FACT's standards development activities are: development of certain standards for medical facilities engaged in blood, bone marrow and cord blood transplantation in then treatment of human disease. FACT's standards apply to all sources of hematopoietic progenitor cells and all phases of collection, processing, and administration of these cells. The standards encompass, but are not limited to, cells isolated from bone marrow or peripheral blood and any variety of manipulations including removal or enrichment of various cell populations, expansion of hematopoietic cell populations, cryopreservation, and infusion. The Standards fall into the following categories: (1) Clinical Program Standards; (2) Hematopoietic Progenitor Cell Collection Standards; (3) Donor and Cell Collection Standards; and (4) Hematopoietic Progenitor Cell Processing Standards. FACT's standards have been made available to health institutions, health professionals, clinical laboratories, health facilities, and other interested members of the scientific and medical community and public. FACT's voluntary standards are designed to provide minimum quality and safety guidelines for facilities and professionals performing hematopoietic progenitor cell therapy or providing related services. FACT has established a voluntary accreditation program for medical facilities that seek FACT certification of compliance with these standards. The goal of FACT's accreditation program is to ensure that both the laboratory and clinical aspects of hematopoietic cell transplantion are conducted in accordance with the Fact standards.

FACT has also developed cord blood bank standards. These standards were developed by consensus with representatives of NETCORD, individual members of ISCT, and other professionals active in cord blood banking. The cord blood bank standards fall into the following categories: (1) Cord Blood Bank Standards; (2) Cord Blood Donor and Collection Standards; (3) Cord Blood Processing Standards; and (4) Selection, Release and Shipping of Cord Blood Units. Such standards are designed to provide minimum guidelines for facilities and individuals performing cord blood collection, processing, testing, banking, selection and release or providing support services for such procedures.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1965 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hardwood Plywood & Veneer Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hardwood Plywood & Veneer Association ("HPVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Hardwood Plywood & Veneer Association, Reston, VA. The nature and scope of HPVA's standards development activities are: establishment of the American National Standard for Hardwood and Decorative Plywood, and the American National Standard for Engineered Wood Flooring. The Standard for Hardwood and Decorative Plywood covers the principal types, face grades, back grades, inner ply grades and constructions of plywood made primarily with hardwood faces, formaldehyde emissions for hardwood plywood and certain reconstituted wood wall panels. Included are requirements for wood species and veneer grading; lumber, particle board, medium density fiberboard, and hardboard cores; bond line performance; panel construction; moisture content; and panel dimensions and tolerances. The standard provides producers, distributors, architects, contractors, builders and users with a common basis for understanding the characteristics of these products.

The Standard for Engineered Wood Flooring covers requirements for grading, moisture content, machining, bond line construction, formaldehyde emissions, and finish of engineered wood flooring. This standard is intended to provide producers, distributors, and users with a description of the characteristics and the basis for the manufacture and sale of these products.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1976 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on December 8, 2004, pursuant to section 6(a) of the national cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NHSU, London, United Kingdom has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on September 21, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 2004 (69 FR 69395).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1973 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Association of Plumbing and Mechanical Officials

Notice is hereby given that, on December 10, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Association of Plumbing and Mechanical Officials (''IAPMO'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the nature and scope of IAPMO's standards development activities are: to provide for the erection, installation, alternation, addition, repair, relocation, replacement, maintenance, or use of any solar, swimming pool, spa or hot tub system.

On September 14, 2004, IAPMO filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 2004 (69 FR 69396).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1980 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electrotechnical Commission Technical Committee 72

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electrotechnical Commission Technical Committee 72 (''IEC TC 72''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Electrotechnical Commission Technical Committee 72, Rosslyn, VA. The nature and scope of IEC TC 72's standards development activities are: related to automatic electrical control devices used in household and some industrial products. IEC TC 72 currently maintains a series of IEC 60730 standards dealing with requirements for components used in different types of control devices including relays, valves, sensors, actuators, locks and the like. The standards developed by IEC TC 72 are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1982 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electrotechnical Commission Technical Committee Subcommittee 37B

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electrotechnical Commission Technical Committee Subcommittee 37B (''IEC TC SC 37B''), by its Secretariat, National Electrical Manufacturers Association (''NEMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization: International Electrotechnical Commission Technical Committee Subcommittee 37B, Rosslyn, VA. The nature and scope of IEC TC SC 37B's standards development activities are: related to components used in low voltage surge protection devices. IEC TC SC 37B currently maintains a series of IEC 61643 standards dealing with general requirements for these components in different types of surge protection devices. The standards developed by IEC TC SC 37B are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1983 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electrotechnical Commission Technical Committee 55

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), International Electrotechnical Commission Technical Committee 55 (''IEC TC 55''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Electrotechnical Commission Technical Committee 55, Rosslyn, VA. The nature and scope of IEC TC 55's standards development activities are: related to wires for electrical winding. IEC TC 55 currently maintains a series of IEC 60317 and IEC 60851 standards dealing with specifications and test methods for different types of winding wires. The standards developed by IEC TC 55 are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1984 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Board for Certification in Occupational Therapy, Inc.

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Board for Certification in Occupational Therapy, Inc. (''NBCOT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of this standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Board for Certification in Occupational Therapy, Inc., Gaithersburg, MD. The nature and scope of NBCOT's standards development activities are: the development, administration, and continual review of a certification process based on current and valid standards that provide reliable indicators of competence for the practice of occupational therapy.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1981 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on November 19, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: BAE Systems North America, Inc., Rockville, MD; The Boeing Company, Chicago, IL; CACI International, Inc., Arlington, VA; Carrillo Business Technologies, Inc., Westminister, CA; Cisco Systems, Inc., San Jose, CA; European Aeronautic Defense and Space

Company EADS N.V., Schiphol-Rijk, The Netherlands; EMC Corporation, Hopkinton, MA; Ericsson Inc., Plano, TX; Factiva, New York, NY; General Dynamics, Falls Church, VA; Hewlett-Packard Company, Palo Alto, CA; Honeywell Defense and Space Electronic Systems, Columbia, MD; International Business Machines Corp, Armonk, NY; Innerwall, Inc., Colorado Springs, CO; L–3 Communications, New York, NY; Lockheed Martin Corporation, Bethesda, MD; Microsoft Corporation, Redmond, WA; Northrop Grumman Corporation, Los Angeles, CA; Oracle Corporation, Redwood Shores, CA; Raytheon Company, Waltham, MA; Rockwell Collins, Cedar Rapids, IA; Saab AB, Stockholm, Sweden; Science Applications International Corporation, San Diego, CA; Smith Aerospace, London, United Kingdom; Sun Microsystems, Inc., Santa Clara, CA; Themis Computer, Fremont, CA; Wakelight Technologies, Inc., Honolulu, HI; Bay Microsystems, Inc., Santa Clara, CA; Parametric Technology Corporation, Needham, MA; Sikorsky Aircraft, Stratford, CT; SPARTA, Inc., Arlington, VA; McDonald Bradley Inc., Herndon, VA; Aereovironment, Simi Valley, CA; FlightSafety International, Flushing, NY; Superlative Technologies, Inc. (dba SuperTEK), McLean, VA; and Real-Time Innovations, Inc., Sunnyvale, CA.

The general area of Network Centric Operations Industry Consortium, Inc.'s planned activity is to help accelerate the achievement of increased interoperability within and between all levels of government of the United States and its allies involved in joint, interagency and multination operations.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1974 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Northeastern Lumber Manufacturers Association

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Northeastern Lumber Manufacturers Association (''NeLMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Northeastern Lumber Manufacturers Association, Cumberland Center, ME. The nature and scope of NeLMA's standards development activities are: development of size and quality standards for Eastern White Pine; maintain those rules in accordance with Voluntary Product Standard 20, developed under the auspices of the Department of Commerce; implementation of those rules as well as wood product grading rules of other agencies certified by the American Lumber Standard Committee through grading inspections of mills in the Northeast United States in order to assure conformation with those standards.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1972 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 10, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Titan America LLC, Norfolk, VA has been added as a Member of PCA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on August 9, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 30, 2004 (69 FR 52932).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1988 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Joint Industry Project for Fluid Properties Meter Development and Support

Notice is hereby given that, on November 30, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Southwest Research Institute: Joint Industry Project for Fluid Properties Meter Development and Support (''SwRI: Fluid Properties Meter'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Columbia Gas Transmission, Charleston, WV; ConocoPhillips Company, Houston, TX; Duke Energy Gas Transmission Corporation, Houston, TX; Panhandle Energy, Houston, TX; Questar Gas Company, Salt Lake City, UT; Tennessee Gas Pipeline Company, Houston, TX; and Transcanada Pipelines Limited, Calgary, Alberta, CANADA. The general area of SwRI: Fluid Properties Meter's planned activity is to advance the development of the Fluid Properties meter from an experimental, proof-of-concept prototype to a production-ready pilot unit. The Fluid Properties meter, developed by SwRI: Fluid Properties Meter, is used to determine properties of natural gas, such as density, molecular weight and calorific value. The program will include the development of requirements and specifications for the system, subsystems and components, and the transfer of knowledge required to implement the fluid properties meter algorithm. The program will also include the actual development and testing of the Fluid Properties meter. Several reviews, such as a system requirements review, system functional review, preliminary design review, critical design review, and test readiness review will be performed during this project.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1986 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Technical Association of the Pulp and Paper Industry, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Technical Association of the Pulp and Paper Industry, Inc. (''TAPPI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Technical Association of the Pulp and Paper Industry, Inc., Norcross, GA. The nature and scope of TAPPI's standards development activities are: Testing procedures and related practices used in the measurement, evaluation, and description of pulp, paper, and related products, including raw materials used in their manufacture, use, or in scientific investigations of any such substances.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1969 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Technologies for Target Assessment

Notice is hereby given that, on October 18, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Technologies for Target Assessment (''TATS member firm Icoria, Inc.'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agilent Technologies, Inc., Santa Clara, CA has been added as a party to this venture and LION Bioscience, Inc., Cambridge, MA has withdrawn as a party to this venture. Also, Paradigm Genetics, Inc., Research Triangle Park, NC has changed its name to Icoria, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TATS member firm Icoria, Inc. intends to file additional written notification disclosing all changes in membership.

On August 1, 2002, TATS member firm Icoria, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2002 (67 FR 57853).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–1977 Filed 2–1–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Falkirk Mining Company (The)

[Docket No. M–2005–002–C]

The Falkirk Mining Company, 2801 1st Street SW, PO Box 1087, Underwood, North Dakota 58576 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its Falkirk Mine (MSHA I.D. No. 32–00491) located in Mclean County, North Dakota. The petitioner requests a modification of the existing standard to allow an alternative method of compliance when raising or lowering the boom mast at construction sites during initial Dragline assembly. This method would only be used during the boom mast raising or lowering, and the machine will not be performing mining operations when raising or lowering the boom for construction or maintenance. The procedure would also be applicable in instances of disassembly or major maintenance which require the boom to be raised or lowered. The petitioner has listed specific guidelines in this petition that would be followed to minimize the potential for electrical power loss during this critical boom procedure. The petitioner asserts that application of the proposed alternative method will not result in a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov*; E-mail: *Comments@MSHA.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 4, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 26th day of January 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–1870 Filed 2–1–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Notice of a meeting of the Advisory Committee on construction safety and health (ACCSH).

SUMMARY: ACCSH will meet February 17, 2005, in Rosemont, IL. This meeting is open to the public.

Time and Date: ACCSH will meet from 9:30 a.m. to 1:30 p.m., Thursday, February 17, 2005.

Place: ACCSH will meet at the Holiday Inn Select O'Hare, 10233 West Higgins Road, Rosemont, IL 60018.

FOR FURTHER INFORMATION CONTACT: For general information about ACCSH and ACCSH meetings: Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020. For information about submission of comments, requests to speak, and the need for special accommodations for the meeting: Veneta Chatmon, OSHA, Office of Information, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (292) 693–1999. Individuals needing special accommodations should contact Ms. Chatmon no later than February 10, 2005.

SUPPLEMENTARY INFORMATION: ACCSH will meet February 17, 2005 in Rosemont, IL. The agenda for this meeting includes:

- Welcome
- Remarks: Office of the Assistant Secretary—OSHA
- Presentation/Discussion—Steel Erection, Slipperiness of Metal Decking and Vanishing Oils
- Consideration of the draft proposed rule on Confined Spaces in Construction
- Public Comment (During this period, any member of the public is welcome to address ACCSH about construction-related safety and health issues. See information below to request time to speak at the meeting.)

All ACCSH meetings are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, at the address above, telephone (202) 693–2350. Electronic copies of this **Federal Register** notice, as well as information about ACCSH workgroups and other relevant documents, are available on OSHA's Web page at *http://www.osha.gov.*

Attendees may request to make an oral presentation by notifying Ms. Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the name of the business or organization), if any, and a brief outline of the presentation. Alternately, at the meeting attendees may request to address ACCSH by signing the public comment request sheet. Requests to speak may be granted at the ACCSH Chair's discretion and as time permits.

Attendees and interested parties may also submit written data, views, or comments, preferably with 20 copies, to Ms. Chatmon, at the address above or at the ACCSH meeting. OSHA will provide submissions received prior to the meeting to ACCSH members and will include each submission in the record of the meeting.

ACCSH Work Groups

The following ACCSH work groups will meet at the Holiday Inn Select O'Hare, 10233 West Higgins Road, Rosemont, IL 60018 in conjunction with this meeting:

Rollover Protective Structures (ROPS) from 8:30 a.m.–9:30 a.m., Thursday, February 17, 2005;

Trenching from 2:30 p.m.–4 p.m., Thursday, February 17, 2005.

Work group meetings are open to the public. For further information on ACCSH work group meetings or on participating on ACCSH work groups, please contact Michael Buchet at the address above or look on the ACCSH page on OSHA's Web page.

Authority: Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC this 26th day of January, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–1888 Filed 2–1–05; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities: Proposed Collection; Comment Request: See List of Evaluation Related ICRs Planned for Submission to OMB in Section A

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Morris K. Udall Foundation, is planning to submit six Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Five of the six ICRs are for revisions to currently approved collections due to expire 06/30/2005 (OMB control numbers 3320–0003, 3320–0004, 3320–2005, 3320–0006, and 3320–0007). One ICR pertains to a new collection request. The six ICRs are being consolidated under a single filing to provide a more coherent picture of information collection activities designed primarily to measure performance. The proposed collections are necessary to support program evaluation activities. The collection is expected neither to have a significant economic impact on respondents, nor to affect a substantial number of small entities. The average cost (in lost time) per respondent is estimated to be 0.16 hours/6.18 dollars.

Before submitting the ICRs to OMB for review and approval, the U.S. Institute is soliciting comments on specific aspects of the proposed information collection as described at the beginning of the section labeled ''Supplementary Information.''

DATES: Comments must be submitted on or before April 4, 2005.

ADDRESSES: Submit your comments, referencing this **Federal Register** notice, by e-mail to *orr@ecr.gov*, or by fax to 520–670–5530, or by mail to the attention of Patricia Orr, Program Evaluation Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701.

FOR FURTHER INFORMATION CONTACT: Patricia Orr, Program Evaluation

Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–670–5299, E-mail: *orr@ecr.gov*.

SUPPLEMENTARY INFORMATION:

Overview

To comply with the Government Performance and Results Act (GPRA) (Public Law 103–62), the U.S. Institute for Environmental Conflict Resolution, as part of the Morris K. Udall Foundation, is required to produce, each year, an Annual Performance Budget and an Annual Performance and Accountability Report, linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The U.S. Institute's evaluation system is key to evaluating progress towards achieving its performance commitments. The U.S. Institute is committed to evaluating all of its projects, programs and services not only to measure and report on performance but also to use this information to learn from and improve its services. The refined evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on performance measurement, learning and improvement.

As part of the program evaluation system, the U.S. Institute intends to collect specific information from participants in, and users of, several of its programs and services. Specifically, six programs and services are the subject of this Federal Notice: (1) Mediation and facilitation services; (2) situation/conflict assessment services; (3) training and workshop services; (4) facilitated meeting services; (5) the roster program services; and (6) program support and system design services. Evaluations will mainly involve administering questionnaires to process participants and professionals, as well as members and users of the National Roster. Responses by members of the public to the Institute's request for information (*i.e.*, questionnaires) will be voluntary.

In 2003, the U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center (CPRC) was granted the approval of the Office of Management and Budget (OMB) to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. The CPRC and the U.S. Institute will seek approval as part of this proposed collection to continue this evaluation partnership. Other agencies have approached the U.S. Institute seeking (a) evaluation services and (b) assistance in establishing their own internal evaluation systems. Therefore, the U.S. Institute will request OMB approval to administer the evaluation questionnaires on behalf of other agencies. One agency, the Department of Interior (Office of Collaborative Action and Dispute Resolution) has already requested such evaluation services through its interagency agreement with the U.S. Institute.

The burden estimates in the ICRs take into consideration the multi-agency usage of the evaluation instruments. The broad interest in the U.S. Institute's evaluation system has fostered an evaluation collaborative among several State and Federal agencies. The sharing of evaluation resources and expertise is advantageous on several fronts: (a) design and development efforts are not duplicated across agencies; (b) common methods for evaluating collaborative processes are established; (c) knowledge, expertise and resources are shared, realizing cost-efficiencies for the collaborating agencies; and (d) learning and improvement on a broader scale will be facilitated through the sharing of comparable multi-agency findings.

Key Issues

The U.S. Institute would appreciate receiving comments that can be used to:

i. Evaluate whether the proposed collection of information is necessary for the proper performance of the U.S. Institute, including whether the information will have practical utility;

ii. Determine whether the nature and extent of the proposed level of anonymity for those from whom the U.S. Institute will be collecting information is adequate and appropriate;

iii. Evaluate the accuracy of the U.S. Institute's estimate of the burden associated with the proposed information collection activities;

iv. Enhance the quality, utility, and clarity of the information to be collected;

v. Minimize the burden of the information collection on those who are to respond, including suggestions concerning use of automated collection techniques or other forms of information technology (*e.g.*, allowing electronic submission of responses).

Burden

The average estimated burden for each response is 0.16 hours/6.18 dollars. As used in this document, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. This includes time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Hour burdens are monetized using fully burdened labor rates derived from Bureau of Labor Statistics tables (U.S. Department of Labor, Bureau of Labor Statistics, ''Employer Costs for Employee Compensation'', Table 2: Civilian workers, by occupational and industry group. Available at: *http://www.ecr.gov/multiagency/program_eval.htm*.

Technical Details

Five of the six upcoming ICRs are for revisions to currently approved collections. In 1999, the U.S. Institute, in cooperation with the Policy Consensus Initiative and state alternative dispute resolution programs, began the task of designing a common program evaluation system. After extensively piloting the evaluation instruments under the currently approved information collection, staff from the U.S. Institute, PCI, Oregon Dispute Resolution Commission, Oregon Department of Justice, Florida Conflict Resolution Consortium, Environmental Protection Agency (Conflict Prevention and Resolution Center), and the Department of Interior (Center for Alternative Dispute Resolution) joined forces to refine the evaluation instruments (particularly the mediation and facilitation instruments). This effort also benefited from input from over 40 practitioners, program administrators, evaluators, researchers and trainers. Dr. Kathy McKnight and Dr. Lee Sechrest, the University of Arizona, assisted with this effort. Evaluation consultant, Dr. Andy Rowe, GHK International, guided the earlier evaluation design. Throughout this effort the William and Flora Hewlett Foundation provided financial assistance.

Technical details of the Institute's program evaluation system are contained in a January 2005 design document entitled ''Program Evaluation System at the U.S. Institute for Environmental Conflict Resolution''. Paper copies of this report can be obtained by contacting the Institute; an electronic copy can be downloaded from the Institute's Web site: *http://www.ecr.gov/*.

Information generated from the evaluation system will be used for a variety of purposes, including performance measurement and reporting, and ongoing improvements to the design and operation of projects and services. Primary audiences for results from the evaluation system include the Udall Foundation Board of Trustees, Congress and OMB, and program management and staff, who will use the information in decision-making regarding program operations and directions. Secondary audiences will likely include practitioners in the field, process participants, prospective users, and members of the public.

A. List of ICRs Planned To Be Submitted

The U.S. Institute is planning to submit six ICRs to OMB, corresponding to 11 individual questionnaires that will be administered to those involved in collaborative problem solving and conflict resolution activities. In the listing below, the questionnaires are organized into six activity areas, indicating the recipients of the questionnaires and, in parentheses, the frequency of administration per respondent. It should be noted that additional questionnaires will be administered to project managers who are federal employees (thus OMB clearance is not necessary).

Mediation/Facilitation Services

(1) Mediations/Facilitations—Participants, at the conclusion of the process (once)
(2) Mediations/Facilitations—Participants, subsequent to the conclusion of the process (once)
(3) Mediations/Facilitations—Facilitators/Mediators (Neutral Practitioner) at the conclusion of the process (once) Situation/Conflict Assessment Services
(4) Assessment—Initiating Organizations and Key Participants, at the conclusion of the process (once)
(5) Assessment—Assessor (Neutral Practitioner) at the conclusion of the process (once)

Training and Workshop Services

(6) Training/Workshop—Participants, at the conclusion (once)
Facilitated Meeting Services
(7) Facilitated Meeting—Meeting Attendees, at the conclusion of the process (once)

Roster Program Services

(8) Roster—Members (once annually)
(9) Roster—Users, at the end of the search (once)
(10) Roster—Users, subsequent to the search (once)

Program Support and System Design Services

(11) Program Support and System Design—Agency Representatives and Key Participants, annually or at the conclusion of the process if the project is completed in less than 12 months (once annually for length of project)

B. Contact Individual for ICRs

Patricia Orr, Program Evaluation Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–670–5658, E-mail: *orr@ecr.gov.*

C. Confidentiality and Access to Information

To encourage candor and responsiveness on the part of those completing the questionnaires, the U.S. Institute intends to report information obtained from questionnaires only in the aggregate at a project or program level. The U.S. Institute also intends to withhold the names of respondents and individuals named in responses. The U.S. Institute believes such information regarding individuals is exempt from disclosure under the Freedom of Information Act (FOIA), pursuant to exemption (b)(6) (5 U.S.C. section 552(b)(6)), as the public interest in disclosure of that information would not outweigh the privacy interests of the individuals. Therefore, respondents will be afforded anonymity. Furthermore, no substantive case-specific information that might be confidential under statute, court order or rules, or agreement of the parties will be sought.

The U.S. Institute is committed to providing agencies, researchers and the public with information on the effectiveness of collaborative problem solving and conflict resolution processes and the performance of the U.S. Institute's programs and services. Access to such useful information will be facilitated to the extent possible. The U.S. Institute will strive to report all information in an open and transparent manner. The U.S. Institute is also committed, however, to managing the collection and reporting of data so as not to interfere with any ongoing processes or the subsequent implementation of agreements. Project/case specific data will not be released until an appropriate time period has passed following conclusion of the project/case; such time periods will be determined on a case by case basis. Freedom of Information Act (FOIA) requests will also be evaluated on a case-by-case basis.

D. Information on Individual ICRs

Mediation/Facilitation Services

A variety of non-adversarial, participatory processes are available as adjuncts or alternatives to conventional forums for solving environmental problems or resolving environmental conflicts. Such collaborative processes range broadly depending on the nature of the problem/dispute and the parties involved as well as their context (for example, early on in planning processes, when seeking administrative relief, or during litigation). Under the right circumstances, a well-designed collaborative process facilitated or mediated by the appropriate mediator/facilitator (neutral practitioner) can effectively assist parties in reaching agreement on plans, proposals, and recommendations to solve their problem or resolve their dispute. Collaborative processes can also result in improvement in relationships among the parties, and increase capacity among the parties to manage or resolve the issue or dispute. The following survey instruments have been designed for use across the broad range of collaborative processes, be it a process to reach agreement on a plan or a set of recommendations or environmental mediation to resolve a dispute.

(1) Mediation/Facilitation Process—Participants End-of-Process Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a mediation/facilitation process, the participants that have been involved will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: Are the parties now more likely to consider collaborative processes in the future; were the appropriate participants effectively engaged; did the participants have the capacity to engage in the process; was the mediator/facilitator that guided the process appropriate; and did all participants have access to relevant information? The voluntary questionnaire contains 27 questions requiring respondents to provide fill-in-the-blank and open-ended responses. Information from the questionnaire will provide the opportunity to evaluate if the intended outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are parties to the collaborative processes. Burden Statement: It is estimated that the annual national

public burden and associated costs will be approximately 600 hours and $23,400 respectively. These values were calculated assuming that on average: (a) Participants require 20 minutes per questionnaire; (b) there are 12 respondents per case; (c) respondents are requested to complete this surveyed only once; and (d) there will be 150 cases evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

(2) Mediation/Facilitation Process—Participants Follow-up Questionnaire; Revision of a currently approved collection; Abstract: To gain information concerning the longer-term effectiveness of the mediation/facilitation process, a follow-up questionnaire will be administered to the parties at a future date following conclusion of the process. Topics to be examined include: Do all participants perceive an improvement in their collective relationships; is the agreement durable. The voluntary questionnaire contains 12 questions requiring respondents to provide fill-in-the-blank and open-ended responses. Information from the questionnaire will permit U.S. Institute staff to evaluate if the process outcomes were sustainable, and if not, why not. The information will also facilitate the assessment of the longer-term impacts of the collaborative processes and agreements. Affected Entities: Entities potentially affected by this action are participants to mediations/facilitations. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 300 hours and $11,700, respectively. These values were calculated assuming that on average: (a) Participants require 10 minutes per questionnaire; (b) there are approximately 12 respondents per project; (c) respondents are asked to complete this questionnaire only once; and (d) there will be 150 cases evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and b) respondents' time is valued at $39/hr.

(3) Mediation/Facilitation Process—Mediator/Facilitator (Neutral Practitioner) Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a mediation/facilitation process, the mediator(s)/facilitator(s) will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: was the collaborative approach well suited to the nature of the issues in conflict; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? In most cases, it will be specified in the mediator/facilitator contracts that they are required to complete the questionnaire. The mediator/facilitator questionnaire contains 34 questions. Information from this questionnaire will provide the opportunity to evaluate if the intended mediation/facilitation outcomes/impacts were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are mediators/facilitators who are federal agency staff or contracted non-federal professionals. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 100 hours and $3,900, respectively. These values were calculated assuming that on average: (a) Mediators/facilitators will require 30 minutes per questionnaire; (b) there are 2 respondents per project; (c) respondents are surveyed only once; and (d) there will be 100 cases evaluated each year (note: the EPA's CPRC does not require ICR clearance to evaluate its cases using this instrument. The CPRC mediators/facilitators will be paid under contract to complete the evaluation questionnaires). Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents'' time is valued at $39/hr.

Situation/Conflict Assessment Services

Situation or conflict assessments are conducted by a neutral party and include a series of confidential structured interviews in person or on the telephone with individuals or groups of parties. Through such assessments, assessors (neutral practitioners) identify and clarify key issues and parties, and assess the appropriateness of a mediation/facilitation process and its potential for helping the parties reach agreement. Assessment reports seek to clarify and communicate in a neutral manner the issues and concerns of all parties, and commonly conclude with process design recommendations intended to provide the parties with one or more options for effectively collaborating to find a solution to their conflict.

(4) Assessment—Initiating Organization/Key Participant Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a situation/conflict assessment process, the initiating agencies/organization(s) and key participants will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: was the conflict assessment approach well suited to the nature of the issues in conflict; was the selected assessor (neutral practitioner) appropriate for the assignment; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? The voluntary questionnaire contains 11 questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire provides the opportunity to: (a) Evaluate the performance for specific cases/projects; (b) evaluate the performance of assessment programs; and (c) use the evaluation feedback as a learning tool to improve the design of future assessment cases/projects. Affected Entities: Entities potentially affected by this action are individuals in organizations that participate in a conflict assessment. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 62.5 hours and $2,437 respectively. These values were calculated assuming that on average: (a) Respondents require 10 minutes per questionnaire; (b) there are 5 respondents per project (c) respondents are surveyed only once; and (d) there will be 75 assessments evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents'' time is valued at $39/hr.

(5) Assessment—Assessor (Neutral Practitioner) Questionnaire; Revision of a currently approved collection; Abstract: Immediately following conclusion of a situation/conflict assessment, the selected assessor(s) will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: was the conflict assessment approach well suited to the nature of the issues in conflict; was assisted negotiation recommended; and, was the recommendation followed? In most cases, it will be specified in the assessor's contract that the assessor will be required to complete the questionnaire. The assessor's questionnaire contains nine questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire will permit the agency staff to evaluate the assessment process and outcomes, and learn from and improve the design of future assessment projects. Affected Entities: Entities potentially affected by this action are assessors who either are staff from or have been contracted by the agency. Burden Statement: It is estimated that the annual national public burden and associated costs will

be approximately 5 hours and $195, respectively. These values were calculated assuming that on average: (a) Assessors require 6 minutes per questionnaire; (b) there is one respondent per project; (c) respondents are surveyed only once; and (d) there will be 50 assessments evaluated each year (note: the EPA's CPRC does not require ICR clearance to evaluate its cases using this instrument. The CPRC assessors are paid under contract to complete the evaluation questionnaires). Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

Training and Workshop Services

Training and workshop sessions are conducted for a variety of audiences. The subject of training and workshop sessions varies widely, depending on the participants and their specific training needs. In general, the training and workshop sessions are designed to increase the appropriate and effective use of collaborative problem solving and conflict resolution processes.

(6) Training/Workshop—Participants Questionnaire, at the conclusion of the training/workshop; Revision of a currently approved collection; Abstract: Training participants will be asked to complete a questionnaire at the end of the training or workshop session. Participation is voluntary and the survey instrument contains eight questions, requiring responses to fill-in-the-blank and open-ended questions. Topics to be evaluated include whether: the training objectives were clear and understood by the participants; an appropriate trainer(s)/facilitator(s) guided the session; participants were engaged appropriately; participants gained valuable knowledge. Affected Entities: Entities potentially affected by this action are individuals who participate in training/workshop sessions. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 195 hours and $7,605, respectively. These values were calculated assuming that on average: (a) Training participants require 6 minutes to complete this questionnaire; and (b) there will be 1,950 participants evaluated each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

Facilitated Meeting Services

Agency staff and contractors facilitate and provide leadership for many meetings, ranging from small group meetings to large public convenings of several hundred attendees. The purpose of the facilitated meetings varies widely, depending on the attendees and their specific meeting objectives.

(7) Meeting Facilitation—Participants Questionnaire, at the conclusion of the meeting; Revision of a currently approved collection; Abstract: Participants at facilitated meetings run by agency staff or contractors will be asked to complete a voluntary questionnaire at the conclusion of the meeting. The questionnaire used in this case contains seven questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will help evaluate the effectiveness of meeting design, effectiveness of facilitator(s), and meeting accomplishments. Affected Entities: Entities potentially affected by this action are individuals who participate in these meetings. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 351 hours and $13,689, respectively. These values were calculated assuming that on average: (a) Meeting attendees require 6 minutes to complete the questionnaire, and (b) there will be 3,510 participants evaluated each year. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents'' time is valued at $39/hr.

Roster Program Services

The U.S. Institute has a full-time Roster Manager who supervises a Roster Program consisting of two main components: design and operation of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals and an associated referral system. Membership on the roster remains open to new applicants at all times. Potential members apply on-line and are required to provide information that demonstrates a level of training and experience adequate to meet specific, objective entry criteria. First constituted in February 2000, the roster currently includes over 250 members nationwide. When making referrals and locating neutral practitioners for sub-contracting, the U.S. Institute uses the roster as a primary source to identify experienced individuals, particularly in the locale of the project or dispute (as required by the Institute's enabling legislation). The public now has direct access to the roster search system via the Internet. When requested by any party, the Roster Manager also provides advice and assistance regarding selection of appropriate practitioners.

(8) Roster—Members Questionnaire; Revision of a currently approved collection; Abstract: On an annual basis roster members will be surveyed to evaluate their perceptions of the roster and to solicit their feedback on how the roster program can be improved. This voluntary questionnaire contains three questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the Roster is performing in meeting the needs of roster members. Affected Entities: Entities potentially affected by this action are roster members. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 25 hours and $975, respectively. These values were calculated assuming that on average: (a) Roster members require 5 minutes per questionnaire; (b) 300 roster members will respond per year; (c) respondents are surveyed only once annually. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

(9) Roster—Questionnaire for Users After Each Roster Search; Revision of a currently approved collection; Abstract: Users who search the roster will be surveyed once for each new roster search. This voluntary questionnaire contains seven questions, requiring simple fill-in-the blank and open-ended responses. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the Roster is performing in meeting the needs of those searching the roster. Affected Entities: Entities potentially affected by this action are individuals who use the roster search system. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 50 hours and $1,950 respectively. These values were calculated assuming that on average: (a) Roster searchers require six minutes to complete the questionnaire; (b) there will be 500 searches per year; and (c) searchers are asked to complete this questionnaire once per search. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

(10) Roster—User Questionnaire—Follow-Up to Search; Revision of a currently approved collection; Abstract: Users of the roster system will receive a follow-up questionnaire approximately four weeks after their search. This voluntary questionnaire contains five questions, requiring fill-in-the blank and open-ended responses. Information from this questionnaire will

permit U.S. Institute staff to evaluate how well the roster program is performing to help users find appropriate practitioners. Affected Entities: Entities potentially affected by this action are individuals who use the roster search system. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 17 hours and $663, respectively. These values were calculated assuming that on average: (a) Users will require four minutes to complete the questionnaire; (b) there will be 250 follow-up evaluations administered each year; and (c) searchers are asked to complete this questionnaire once per search. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

Program Support and System Design Services

The U.S. Institute provides leadership and assistance to agencies/organizations developing collaborative problem solving and dispute resolution programs and systems. Program development and dispute system design services include assistance with planning, developing, designing, implementing, evaluating, and/or refining federal environmental conflict resolution programs, systems for handling administrative disputes, or approaches for managing environmental decision making (*e.g.*, with processes under the National Environmental Policy Act (NEPA)).

(11) Program Support and System Design Services—Questionnaire for Agency Representatives and Key Participants (annual survey for length of project); New collection request; Abstract: Agency representatives and key project participants who request and receive U.S. Institute program support and system design services will be asked to complete a voluntary questionnaire containing six questions. The questionnaire will require fill-in-the blank and open-ended responses. Affected Entities: Entities potentially affected by this action are individuals who benefit from program support and system design services from the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately six hours and $234, respectively. These values were calculated assuming that on average: (a) Agency representatives or key project participants require six minutes to complete the questionnaire; (b) there will be 60 responses each year; and (c) on average three agency representatives/key participants are involved in each initiative. Cost burden estimates assume: (a) There are no capital or start-up costs for respondents, and (b) respondents' time is valued at $39/hr.

(Authority: 20 U.S.C. 5601–5609)

Dated: January 27, 2005.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 05–1903 Filed 2–1–05; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum and Library Services Board; Sunshine Act

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets for the agenda of a forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of this meeting is required under the Sunshine in Government Act.

TIME/DATE: 2 p.m. to 5:30 p.m. on Tuesday February 15, 2005.

AGENDA: Committee Meetings of the Fourth Meeting of the National Museum and Library Services Board

2 p.m.–3:30 p.m. Executive Session (Closed to the Public)

4 p.m.–5:30 p.m. Policy and Planning Committee (Open to the Public)

I. Staff Reports

II. Other Business

4 p.m.–5:30 p.m. Partnerships and Government Affairs Committee (Open to the Public)

I. Staff Reports

II. Other Business

ADDRESSES: The Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC, (202) 606–4649.

TIME/DATE: 9 a.m. to 12:30 p.m. on Wednesday February 9, 2005.

AGENDA: Fourth Meeting of the National Museum and Library Services Board (open to the Public)

I. Welcome

II. Approval of Minutes

III. Program Reports

IV. Committee Reports

V. Program: Libraries, Museums and New Technologies: Recent Research

VI. Other Business

VII. Adjourn

ADDRESSES: The Government Printing Office, 732 North Capitol Street, NW., Carl Hayden Room, 8th Floor, Washington, DC, (202) 512–0571.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers and authorities related to Museum and Library Services.

The executive session from 2 p.m. to 3:30 p.m. on Tuesday, February 15, 2005 will be closed pursuant to subsections (c)(4) and (c)(6) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meetings from 4 p.m. until 5:30 p.m. Tuesday, February 15, 2005 and the meeting from 9 a.m. to 12:30 p.m. on Wednesday, February 16, 2005 are open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Dated: January 31, 2005.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.

[FR Doc. 05–2096 Filed 1–31–05; 2:11 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability Public Workshop

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft Revision 1 of Regulatory Guide 1.188, entitled ''Standard Format and Content for Applications To Renew Nuclear Power Plant Operating Licenses,'' is temporarily identified by its task number, DG–1140, which should be mentioned in all related correspondence. Like its predecessor, the proposed revision describes a method that the NRC staff finds acceptable for complying with the NRC's regulatory requirements in title 10, part 54, of the *Code of Federal Regulations* (10 CFR part 54), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants'' (commonly known as the license renewal rule). Specifically, 10 CFR part 54 specifies the information that a nuclear power plant licensee must include in its application to renew an operating license issued by the NRC.

The NRC initially issued this guide as Regulatory Guide 1.188, dated July 2001, after soliciting and resolving public comments on three draft regulatory guides (DG–1104 in August 2000, DG–1047 in August 1996, and DG–1009 in December 1990). As such, Regulatory Guide 1.188 incorporated lessons learned from the review of license renewal applications and Owners Group topical report reviews. The guide also incorporated relevant information gleaned from developing the ''Standard Review Plan for the Review of License Renewal Applications for Nuclear Power Plants'' (NUREG–1800),[1] and the ''Generic Aging Lessons Learned (GALL) Report'' (NUREG–1801), as well as public comments received on those documents. (The staff summarized those comments in NUREG–1739, ''Analysis of Public Comments on the Improved License Renewal Guidance Documents.'')

Since the NRC initially published Regulatory Guide 1.188, the Nuclear Energy Institute (NEI) has developed Revision 5 of NEI 95–10, ''Industry Guideline for Implementing the Requirements of 10 CFR part 54—The License Renewal Rule,'' dated January 2005.[2] The NRC staff has reviewed that document and found that, with the exceptions discussed in Section C, ''Regulatory Position,'' of Draft Regulatory Guide DG–1140, Revision 5 of NEI 95–10 provides guidance that the staff considers acceptable for use in implementing the license renewal rule.

The NRC staff is soliciting stakeholder comments on Draft Regulatory Guide DG–1140 and/or Revision 5 of NEI 95–10, and specifically on any inconsistency or incompatibility between the guidance in these documents and the NRC guidance set forth in NUREG–1800 and NUREG–1801. Toward that end, the NRC is also announcing a public workshop to gather public comments on the revised documents. The workshop is scheduled for March 2, 2005, and will be held in the Commissions' Hearing Room, Room O–1G16, at the NRC's headquarters in Rockville, Maryland. For further details and the workshop agenda, see the related meeting notice, which will be available on the NRC's public Web site at *http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html*.

The NRC staff anticipates that the workshop will give participants an opportunity to ask questions, obtain further information, offer comments and opinions, and otherwise facilitate the formulation and preparation of written comments for NRC staff consideration of the revised license renewal guidance documents. To ensure that the staff records all stakeholder input, the proceedings of the workshop will be transcribed and the NRC staff will prepare a summary report to categorize the comments.

Comments on Draft Regulatory Guide DG–1140 and/or Revision 5 of NEI 95–10 may be submitted in writing or in electronic form. Please mention DG–1140 in the subject line of your comments. All comments should include supporting justification in enough detail for the NRC staff to evaluate the need for changes in the guidance, as well as references to the operating experience, industry standards, or other relevant reference materials that provide a sound technical basis for such changes. Editorial and style comments are not necessary because the NRC staff anticipates the need to edit and reformat the guidance documents before issuing them in final form.

Comments Draft Regulatory Guide DG–1140 and/or Revision 5 of NEI 95–10 will be made available to the public in their entirety in the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Draft Regulatory Guide DG–1140 may be directed to Mr. M.P. Lintz, at (301) 415–4051 or via e-mail to *MPL2@nrc.gov*.

Comments would be most helpful if received by March 31, 2005. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide

[1] Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service (NTIS) by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; *http://www.ntis.gov*; telephone (703) 487–4650. Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; e-mail is *PDR@nrc.gov*. These documents are also available electronically through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

[2] Copies are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; e-mail *PDR@nrc.gov*. This document is also available through the NRC's license renewal Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/guidance.html#nuclear*, and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML050280113. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML050230010. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of January, 2005.

For the U.S. Nuclear Regulatory Commission.

Gina F. Thompson,

Acting Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 05–2025 Filed 2–1–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549,

Extension: Regulation S–X, OMB Control No. 3235–0009, SEC File No. 270–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–X sets forth the form and content of, and requirements for, financial statements required to be filed as a part of registration statements under the Securities Act of 1933, registration statements filed under section 12, annual or other reports filed under section 13 and 15(d) and proxy and information statements filed under section 14 of the Securities Exchange Act of 1934, registration statements and annual reports filed under the Public Utility Holding Company Act of 1935 and registration statements and shareholder reports filed under the Investment Company Act of 1940. Regulation S–X is assigned one burden hour for administrative convenience because it simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: January 26, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–396 Filed 2–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Carmel Container Systems Ltd. To Withdraw Its Ordinary Shares, NIS 1.0 Par Value per Share, From Listing and Registration on the American Stock Exchange LLC File No. 1–09274

January 27, 2005.

On December 1, 2004, Carmel Container Systems Ltd., an Israeli corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its ordinary shares, NIS 1.0 par value per share (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on November 7, 2004 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board cited the following reasons: (i) The limited number of holders of the Security; (ii) exceptionally low trading volume in the Security; and (iii) the burden inherent in continuing to be listed and registered (including, for example, the necessity of satisfying reporting obligations and Sarbanes-Oxley Act requirements) against the benefits of the Security being listed on the Amex and registered under the Act.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in Israel, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing and registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 22, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–09274 or;

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number 1–09274. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–1911 Filed 2–1–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Commanche Properties, Inc.; Order of Suspension of Trading

January 31, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Commanche Properties, Inc. (''Commanche''). The Commission is concerned that Commanche may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities which failed to comply with the resale restrictions of Regulation D. Commanche, a company that has made no public filings with the Commission, is quoted on the Pink Sheets under the ticker symbol CMCH, and has recently been the subject of spam e-mail touting the company's shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.s.t. January 31, 2005 through 11:59 p.m. e.s.t., on February 11, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2055 Filed 1–31–05; 11:48 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51083; File No. SR–NASD–2004–164]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to the Random Selection of Arbitrators by the Neutral List Selection System

January 26, 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 October 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule change as described in Items I and II, below, which Items have been prepared by NASD. On January 5, 2005, NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASD Dispute Resolution proposes to amend Rule 10308 of the NASD Code of Arbitration Procedure (''Code'') to change the method used by the Neutral List Selection System (''NLSS'')[4] to select arbitrators from a rotational to a random selection function by incorporating the random selection provision of the proposed Customer and Industry Code revisions.[5] Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) Unchanged.

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1)–(3) Unchanged.

(4) Preparation of Lists.

(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a [rotating] *random* basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.

(B) Unchanged.

(5)–(6) Unchanged.

(c)–(f) Unchanged.

* * * * *

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

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[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mignon McLemore, NASD, to Catherine McGuire, SEC (January 5, 2005).

[4] NLSS is the computer program NASD uses to select arbitrators on a rotational basis. It has been in use since November 1998.

[5] NASD Dispute Resolution has filed with the SEC a proposed rule change to the Code to reorganize the current rules, simplify the language, codify current practices, and implement several substantive changes. The rule filing was submitted in three parts: Customer Code, Industry Code, and Mediation Code. The Customer Code was filed on October 15, 2003, and amended on January 3, 2005 and January 19, 2005 (SR–NASD–2003–158); the Industry Code was filed on January 16, 2004, and amended on February 26, 2004 and January 3, 2005 (SR–NASD–2004–011). The Mediation Code was filed on January 23, 2004, and amended on January 3, 2005 (SR–NASD–2004–013). It does not contain any provisions concerning the NLSS. The three new codes will replace the current Code in its entirety. The Code revision is undergoing SEC staff review and has not yet been published for comment.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

NASD Dispute Resolution is upgrading its computer technology, in what is known as the Mediation and Arbitration Tracking and Retrieval Interactive Case System (''MATRICS''), which will replace its two case management systems: CRAFTIS [6] and NLSS. NASD will implement MATRICS in a series of releases, in which various functions from CRAFTIS and NLSS will be adapted and programmed to operate within MATRICS.[7] NASD has determined that the NLSS components of MATRICS are ready to be developed. Most functions of NLSS will be transferred to MATRICS.

As part of this computer technology upgrade, NASD has determined that MATRICS should select arbitrators on a random basis, instead of a rotational basis, like NLSS currently does. NASD is proposing to switch from rotational to random for several reasons. First, other self-regulatory organizations, governmental entities, and private alternative dispute organizations select panels for their arbitration cases by generating a random list of arbitrators. For example, the New York Stock Exchange (NYSE) [8] and the Society of Maritime Arbitrators [9] offer to the parties a random list selection procedure to select panels to decide claims in their respective arbitration forums. The California Department of Industrial Relations,[10] the Federal Mediation and Conciliation Service,[11] and the Federal Emergency Management Agency [12] also use random list selection. Some state courts that provide alternative dispute resolution services also use random list selection to choose arbitrators for their hearings.[13]

Second, in order for a rotational system to operate effectively and efficiently, a large amount of computer code is required to manage and maintain the arbitrator rotation. According to NASD, a rotational selection system works best if the data that the system uses to generate the lists remain static. However, the data input into NLSS changes frequently. For example, in the last two years, NASD Dispute Resolution has added eight hearing locations, and, in that time, has added approximately 1,000 new arbitrators to the database. Once these changes to the data are input into NLSS, the rotational system attempts to incorporate them when it generates new lists. Any attempt to modify the computer code to accommodate these changes is time-consuming and costly. Also, maintaining a selection system that is purely rotational is cumbersome because additional code is needed to track the histories of each selection to ensure that all arbitrators have an equal opportunity to appear in the rotation, which directly affects list selection.

Last, NASD understands that, under a random selection system, it is possible for a particular arbitrator to be selected for consecutive lists more frequently than another arbitrator. However, a statistical comparison of one arbitrator's selection to another, using a large sample of eligible arbitrators and lists generated, should show that one arbitrator is not being selected for lists more frequently than any other.[14] While NASD acknowledges this anomaly in a random selection system, NASD believes that the benefits of such a system, such as ease of design, cost-efficient maintenance, and overall fairness of random selection (as well as the increased perception of fairness) will strengthen the operation of the forum.[15]

NASD Dispute Resolution believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties and arbitrators with an automated system, MATRICS, which will help the forum operate more efficiently while maintaining the core goal of providing arbitrators who have an equal probability of being listed for service on any given list of proposed arbitrators. In an effort to sustain the progress made on the MATRICS upgrades, NASD proposes to amend Rule 10308(b)(4) with a delayed implementation date, so that the developers can program this component for MATRICS using the random selection method of generating arbitrator lists in order to be ready when this phase of MATRICS becomes operational. NASD is, therefore, requesting accelerated review and approval for this proposed rule change to allow the programmers to begin creating the code, so that they will remain on development schedule while the Commission is reviewing the Code revisions.[16] According to the technology development plan, NASD is scheduled to complete the arbitrator selection function of MATRICS in the third quarter of 2005. For the developers to meet this goal, NASD must amend the rule now to introduce the concept of random selection in order to provide the developers with the lead-time necessary to create the software and implement it on the MATRICS platform.[17] While the software is being created, NLSS will continue to generate lists of arbitrators on a rotating basis. Subject to Commission approval of this rule, NASD will upgrade MATRICS with the random selection function, phase out NLSS, and replace it with MATRICS.

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[6] CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses an old technology platform and is not Web-based.

[7] A new component for MATRICS, the Web-based arbitration claim filing system, has already been developed and became effective on August 5, 2004. Parties may access the online system at *http://apps.nasd.com/mediation_&_arbitration/online_filing.asp.* The SEC approved the final version of the system on June 16, 2004. See Securities Exchange Act Rel. No. 49876 (June 16, 2004), 69 FR 35090 (June 23, 2004).

[8] The SEC approved for immediate effectiveness a NYSE request to extend its pilot program, the Voluntary Supplemental Procedures for Selecting Arbitrators (''Voluntary Procedures''), which allows parties to, among other things, select arbitrators using the Random List Selection method. *See* Securities Exchange Act Rel. No. 49915 (June 25, 2004), 69 FR 39993 (July 1, 2004).

[9] Society of Maritime Arbitrators, Inc., Recreational and Small Commercial Vessel Salvage Arbitration (visited Sept. 29, 2004) <*http://www.smany.org/sma/salvrule.html*>.

[10] California Department of Industrial Relations, State Mediation and Conciliation Services, How to Request an Arbitration List (visited Sept. 1, 2004) <*http://www.dir.ca.gov/csmcs/HowToRequestPanel.html*>.

[11] Federal Mediation and Conciliation Service, Arbitration FAQs (visited Sept. 1, 2004) <*http://www.fmcs.gov/internet/faq.asp?categoryID=133#Q16532*>.

[12] Federal Emergency Management Agency, Arbitration Guidelines For The Cerro Grande Fires (visited Sept. 1, 2004) <*http://www.fema.gov/cerrogrande/arbitration/guide.shtm*>.

[13] *See, e.g.*, U.S. Bankruptcy Court for the Middle District of Tenn. (ADR Program); Nev. Sup. Ct. Arb. R. 6; and Minn. R. 5530.0900 (2004).

[14] In fact, the same comparative analysis conducted under a rotational method should yield a statistically similar result.

[15] NASD will hire an outside consultant to audit the random selection system after it has been operational for one year and independently verify that the random selection system is operating as described in this proposed rule change. NASD will also keep statistics on the arbitrators selected by the random selection system who appear on an arbitrator list in order to monitor the effectiveness of the random selection system. *See supra* note 3.

[16] The proposed Customer Code and Industry Code revisions, which have already been filed with the SEC, contain a random selection provision. *See supra* note 4.

[17] The alternative would result in duplicative effort and wasted resources, because programmers would have to develop and program MATRICS to select arbitrators under the current rules, and then discard that programming and create new software once the Code revision has been approved.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[18] in general, and with Section 15A(b)(6) [19] of the Act, in particular, in that the proposal is 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 Dispute Resolution believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties with an automated system that will help the forum operate more efficiently.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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–2004–164 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–2004–164. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2004–164 and should be submitted on or before February 22, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the proposed rule change as amended and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(6) [20] of the Act.[21] Section 15A(b)(6) requires, among other things, that the rules of a national securities association are 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. The Commission believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties with an automated case management system that will help the NASD Dispute Resolution arbitration forum operate more efficiently.[22]

The Commission finds good cause for approving the proposed rule change as amended prior to the thirtieth day after the publication of notice of filing thereof in the **Federal Register**. Accelerated approval will provide NASD Dispute Resolution with the certainty it needs to upgrade its computer technology to select arbitrators on a random, rather than a rotational, basis and to ultimately replace NLSS with MATRICS.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2004–164) as amended be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–397 Filed 2–1–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78o–3.

[19] 15 U.S.C. 78o–3(b)(6).

[20] 15 U.S.C. 78o–3(b)(6).

[21] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[22] *See supra* note 15.

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4985]

30-Day Notice of Proposed Information Collection: DS 4053, Department of State Mentor-Protégé Program Application, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Mentor-Protégé Program Application,
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Administration, A/SDBU.
- *Form Number:* DS 4053.
- *Respondents:* Small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts.
- *Estimated Number of Respondents:* 20 respondents per year.
- *Estimated Number of Responses:* 10 per year.
- *Average Hours Per Response:* 21.
- *Total Estimated Burden:* 210.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 2, 2005.

ADDRESSES: Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of

Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7860. You may submit comments by any of the following methods:

- E-mail: *ahunt@omb.eop.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Hand Delivery or Courier: OIRA, Department of State Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503
- Fax: 202–395–6974

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Patricia Culbreth, A/SDBU, SA–6, Rm. L–500, Washington DC, 20522, who may be reached on 703–875–6881. E-mail, *culbrethpb@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

This information collection facilitates implementation of a mentor-protégé program that encourages business agreements between small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts. Such a program should assist the State Department OSDBU office in reaching its small business goals.

Methodology:

Respondents may submit the information by e-mail using DS–4053, or by letter using fax or postal mail.

Additional Information: None.

Dated: November 23, 2004.

Durie N. White,

Operations Director, Bureau of Administration, Department of State.

[FR Doc. 05–1929 Filed 2–1–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 4986]

Determination and Waiver of Section 592 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D, Public Law 108–447), Relating to Compliance With the Algiers Agreements

Pursuant to the authority vested in me by section 592 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D, Pub. L. 108–447), I hereby determine that it is in the national security interests of the United States to waive the requirements of this section as they pertain to the central Governments of Eritrea and Ethiopia.

This determination shall be notified to the Congress and published in the **Federal Register**.

Dated: January 24, 2005.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 05–1928 Filed 2–1–05; 8:45 am]

BILLING CODE 4710–26–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Extension of Deadline for Public Comment on Out-of-Cycle Review of the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice extends by two weeks the deadline for the submission of comments in the Out-of-Cycle Review (OCR) of the People's Republic of China (China) under section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly referred to as the ''Special 301'' provision of the Trade Act.

DATES: Submissions must be received on or before 5 p.m. on Monday, February 14, 2005.

ADDRESSES: Comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0446@ustr.eop.gov,* with ''Special 301 Out-of-Cycle Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Ronald Meyers, Director of Intellectual Property and China, at (202) 395–9549, Angela Davis, Director of China Affairs, at (202) 395–3900, or Stanford McCoy, Assistant General Counsel, at (202) 395–3581, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 3, 2004, the Office of the United States Trade Representative (USTR) announced the results of the 2004 Special 301 review and stated that an OCR would be conducted in early 2005 to assess China's actions to implement effectively the commitments it undertook under the Joint Commission on Commerce and Trade (JCCT), its WTO commitments, and a 1995 bilateral intellectual property agreement with the United States (including additional commitments made in 1996). On December 14, 2004, USTR requested written comments from the public concerning the acts, policies, and practices relevant for this review under section 182 of the Trade Act (69 FR 74561). The original deadline for submissions was Monday, January 31, 2005. In order to afford members of the public the fullest possible opportunity to respond to this request, USTR is extending the deadline for submissions by two weeks, to Monday, February 14, 2005. For details concerning the information requested and requirements for comments, respondents are asked to refer to the USTR request for written submissions from the public published in the **Federal Register** on December 14, 2004 (69 FR 74561).

James Mendenhall,

Assistant U.S. Trade Representative for Services, Investment, and Intellectual Property.

[FR Doc. 05–1883 Filed 2–1–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–19400]

Commercial Aviation Safety Team Safety Enhancements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of order designating information as protected from disclosure.

SUMMARY: The Federal Aviation Administration (FAA) is designating information provided to the agency from approved voluntary compliance with safety enhancements recommended by the Commercial Aviation Safety Team (CAST) as protected from public

disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws. The designation is intended to encourage sharing of information between the FAA and operators implementing the CAST safety enhancements.

DATES: Effective February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Margaret Gilligan, Deputy Associate Administrator, Regulation and Safety, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7804.

SUPPLEMENTARY INFORMATION:

Availability of This Designation Order

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemakings' Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202–267–9680. Be sure to identify the docket number of this order.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *http://dms.dot.gov.*

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety information is protected from disclosure in order to encourage persons to provide the information to the FAA. The FAA must first issue an order specifying why the agency finds that the information should be protected in accordance with that section. The FAA's rules for implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under section 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in section 40123, part 193, and the order designating the information as protected. This FAA order to protect CAST information from disclosure is issued under 14 CFR 193.11, which sets out the notice procedure for designating information as protected.

A notice of proposed order designating CAST information as protected from disclosure was published in the **Federal Register** on October 26, 2004 (69 FR 62503). The FAA received three comments in response to the notice. See ''Summary of Comments Received and the FAA's Responses'' below.

Applicability

This order is applicable to any FAA office that receives information covered under this designation from a CAST member. This order is also applicable to any other government agency that receives such information from the FAA. In order for any other government agency to receive CAST information protected from disclosure under this designation from the FAA, an agency must first stipulate, in writing, that it will abide by the provision of 14 CFR part 193 and this order.

Description of the Safety Information To Be Protected

In December 1997, the National Civil Aviation Review Commission recommended that all elements of the civil aviation community join together to establish an integrated safety agenda that would continue to drive down the fatal accident rate for commercial aviation. To respond to this recommendation, the aviation community created the Commercial Aviation Safety Team (CAST). CAST is a voluntary organization made up of government agencies, air operators, manufacturers and aviation labor organizations dedicated to reducing the commercial aviation accident rate by 80% by 2007. The team's work has centered on the analysis of past accidents in particular categories. Based on the analysis, CAST identifies safety enhancements, which, if implemented, will reduce the risk of these types of accidents happening in the future. Its focus in the future will be on incident/precursor data to mitigate risks prior to fatal mishaps.

The safety enhancements may call for action by government agencies manufacturers, operators, or aircrew.

CAST has identified 47 safety enhancements in its current plan, and future safety enhancements included in later revisions to the CAST plan, which CAST members have agreed to implement. Because implementation is voluntary, and may be different at various operators or manufacturers, CAST members agree that it is important to collect information to evaluate the level of implementation. This information will be invaluable to measuring CAST's effectiveness in reducing the fatal accident rate and reducing future risk in civil aviation.

Summary of the Protected Safety Information

A. *Who may participate?* Air operators, crewmembers and manufacturers who are targeted to implement safety enhancements recommended by CAST.

B. *What voluntarily provided information will be protected from disclosure under this designation?*

1. All information related to whether an operator, crewmember, or manufacturer has implemented a safety enhancement recommended by CAST that is reported to an FAA inspector or other FAA representative.

2. All information related to the level of implementation, the methods used to implement and the results of implementation provided by an operator, crewmember or manufacturer to an FAA inspector or other FAA representation.

3. All information related to whether an operator, crewmember or manufacturer has implemented a safety enhancement recommended by CAST that is reported to the FAA by a CAST member organization.

4. All information related to the level of implementation by an operator, crewmember or manufacturer reported to the FAA by a CAST member organization.

5. Reports prepared by the FAA, any CAST member organization, or any team or workgroup established by or associated with CAST that is based on information related to the implementation of safety enhancements.

6. Any database containing information related to the implementation of safety enhancements and/or the effectiveness of these safety enhancements in eliminating or mitigating the underlying safety hazard.

7. All information related to changing risk, emerging threats, or accident precursors. Incident data (*e.g.*, FOQA and ASAP) used as a diagnostic tool will be included.

C. *How can persons participate?* An operator, crewmember or manufacturer can participate by voluntarily providing data related to implementation of safety enhancements to an FAA inspector, to another FAA representative or to CAST through a CAST member organization.

D. *What is the duration of this protection?* Information related to implementation of safety enhancements recommended by CAST will be protected indefinitely.

Summary of Findings

The FAA designates information received from operators and manufacturers related to implementation of CAST safety enhancements as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

1. *Summary of why FAA finds that the information will be provided voluntarily*—The very essence of CAST is voluntary participation. Those who are members of CAST, who take part in the accident analysis, determine the feasibility of safety enhancements, and agree to implement the enhancements do so voluntarily. The key to CAST success now rests on understanding the level and effectiveness of implementation. Operators, crewmembers and manufacturers who have taken part in the program voluntarily to this point can be expected to provide information voluntarily to support achieving a shared goal of improving safety.

2. *Description of the type of information that may be voluntarily provided under the program and why FAA finds that the information is safety-related*—CAST participants will provide information as to safety enhancements implemented, the method of implementation, the process to evaluate the implementation and any other information, such as best practices related to the implementation of safety enhancements. The FAA finds this information is safety-related because it will aid in measuring whether the safety goal—reducing the commercial fatal accident rates by 80% by 2007—is being achieved.

3. *Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information*—Because the safety enhancements are not required by regulation, operators, crewmembers and manufacturers have wide discretion when they implement them. Industry is concerned that if disclosed, there is the potential for the information to be used for purposes other than improving aviation safety, which was the primary reason for establishing CAST. Withholding such information from disclosures is consistent with FAA's safety responsibilities because without information on implementation of the safety enhancements, the FAA and CAST will not be able to determine the effectiveness of safety enhancements. If the FAA and CAST do not receive the information, the FAA and the public will be deprived of the opportunity to determine whether the safety goal can be reached.

4. *Summary of why receiving the information aids in fulfilling the FAA's safety responsibilities*—With this information, the FAA and industry will be able to determine whether the safety enhancements are effective. If the data suggests the goal to reduce the fatal accident rate will not be achieved, additional safety enhancements could be identified and implemented.

5. *Summary of why withholding the information from disclosure is consistent with FAA safety responsibilities*—Withholding the information from disclosure is consistent with FAA safety responsibilities because, to reach the FAA's safety goal, the FAA must be able to evaluate the implementation and effectiveness of safety enhancements identified through CAST.

6. *Summary of when withholding the information from disclosure would not be consistent with FAA safety responsibilities as described in 14 CFR 193.9*—The FAA will release information, as set forth in part 193, to explain the need for changes in FAA policies, procedures and regulations. The FAA may release de-identified, summarized information derived from information reported about implementation of the CAST safety enhancements. When necessary to correct a condition that may compromise safety, or to encourage more complete and timely implementation of safety enhancements, the FAA may release information to the members of CAST. The FAA will give information to CAST members who are government agencies only if each agency meets the requirements 14 CFR 193.7(e). The FAA will give information to CAST members that are not government agencies only if each member provides adequate assurance that it will protect the information from further release and it will limit access to those with a need to know to carry out safety responsibilities.

7. *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources*—Operators, crewmembers and manufacturers will provide information related to the implementation of CAST safety enhancements directly to the FAA inspectors or other FAA employees designated to receive such information. In this way, the information protected under this order will be easily identified and distinguished from other information the FAA receives from other sources.

Summary of Comments Received and the FAA's Response

A proposed FAA order designating CAST information as protected from disclosure under part 193 was published on October 26, 2004 in the **Federal Register** (69 FR 62503). The FAA received three comments in response to the proposed order.

Comment: One commenter suggested that CAST had completed its work and the order was not necessary.

FAA Response: CAST has not completed its work. In fact, the members of CAST have committed to a goal that will maintain a continuous reduction in the fatality risk in the United States and international commercial aviation beyond 2007. The future vision of CAST is: Key aviation stakeholders acting cooperatively to lead the worldwide aviation community to the highest levels of global commercial aviation safety by focusing on the right things.

Comment: Two commenters supported the order. One commenter from industry stated, ''Absent clear protection, some carriers may choose not to participate in CAST''. * * * Such a result would clearly contradict the public interest.'' The commenter urged the FAA to issue a final order.

The other commenter, also from industry, while supporting the order, suggested several minor changes regarding the definition of eligible participants and the nature of the protected information. The FAA has made those editorial changes.

Designation

Accordingly, the Federal Aviation Administration hereby designates the above-described information submitted to demonstrate implementation of CAST safety enhancements to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on January 26, 2005.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety.

[FR Doc. 05–1915 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23.1523, Minimum Flight Crew

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23.1523. This Advisory Circular (AC) sets forth one method that may be used to show compliance to the requirements contained within 14 CFR, part 23, 23.1523, which prescribes the certification requirements for minimum flight crew on part 23 airplanes. This AC is one method that can be used to determine workload factors and issues for normal, utility, acrobatic and commuter category airplanes. Material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

This material is a reference for part 23 airplane manufacturers, modifiers, Federal Aviation Administration (FAA) design evaluation engineers, flight test engineers, engineering flight test pilots [Aircraft Certification Office (ACO), and Flight Standards, and Manufacturers] as well as human factors engineering evaluators. This material may be used by FAA authorized designees to perform workload evaluations. This AC encourages participation and coordination from all the test community participants described above. This AC is consistent with the flight test guidance and workload factors described in the minimum flight crew evaluation sections and workload factors described in AC 23–8B. This AC is an acceptable means of showing compliance for part 23 on flight tests and pilot judgments.

The draft advisory circular was issued for Public Comment on July 2, 2004 (69 FR 40451). When possible, comments received were used to modify the draft advisory circular.

DATES: Advisory Circular (AC) 23.1523 was issued by the Manager, Small Airplane Directorate on January 12, 2005.

How to Obtain Copies: A paper copy of AC 23.1523 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone (301) 322–5377, or by faxing your request to the warehouse at (301) 386–5394. The policy will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

Issued in Kansas City, Missouri on January 12, 2005.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1916 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Ardmore Municipal Airport, Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Ardmore Municipal Airport under the provisions of Title 49 United States Code, Section 47153.

DATES: Comment must be received on or before March 1, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airport Development Office, ASW–630; Forth Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mayor Sheryl Ellis, City of Ardmore, at the following address: P.O. Box 249, 23 South Washington Street, Ardmore, OK 73402.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Harris, Senior Program Manager, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office, ASW–631, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Ardmore Municipal Airport under the provisions of the Act.

On November 17, 2004, the FAA determined that the request to release property at Ardmore Municipal Airport submitted by the city of Ardmore met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than March 15, 2005.

The following is a brief overview of the request: The Ardmore Airport Development Authority requests the release of 10 (ten) acres of airport property. The release of property will allow for industrial development projects to proceed. The sale is estimated to provide $25,000.00 to be placed toward the purchase of an airport rescue and firefighting vehicle.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Ardmore Municipal Airport.

Issued in Fort Worth, Texas, on January 24, 2005.

Rick Marinelli,

Acting Manager, Airports Division.

[FR Doc. 05–1919 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 16, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado, 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel E. Centa, Director of Public Works and Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado, 81001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21. On December 17, 2004, the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than April 29, 2005.

The following is a brief overview of the request:

The Pueblo Memorial Airport requests the release of 6.02 acres of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado, on January 12, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–1917 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Fort Lauderdale Executive Airport; Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Fort Lauderdale, Florida under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 19, 2004, the FAA determined that the noise exposure maps submitted by the City of Fort Lauderdale, Florida under part 150 were in compliance with applicable requirements. On January 14, 2005, the FAA approved the Fort Lauderdale Executive Airport noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Lauderdale Executive Airport noise compatibility program is January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 130. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Fort Lauderdale Executive Airport, effective January 14, 2005.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The City of Fort Lauderdale, Florida submitted to the FAA on February 4, 2004, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 2000, through December 2002. The Fort Lauderdale Executive Airport exposure maps were determined by FAA to be in compliance with applicable requirements on February 19, 2004. Notice of this determination was published in the Federal Register on February 19, 2004.

The Fort Lauderdale Executive Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion, 2002, beyond the year 2007. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 47504 of the Act. The FAA began its review of the program on July 20, 2004, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-seven (27) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective January 14, 2005.

Our right approval was granted for fifteen (15) of the twenty-seven (27) specific program elements. Seven (7) elements were disapproved for the purposes of part 150, four (4) elements were partially approved, and one (1) required no action. The approval/disapproval action was for the following program measures:

Operational Measures

1. Restriction of Jet Use of Runway 13/31

The City requests that the FAA amend the existing voluntary limitation of jet use of Runway 13/31 to implement it as a formal preferential runway program element. This program element is appropriate because there are residential areas closer to the ends of this runway than to the ends of Runway 08/26. Formalizing the procedure is expected to reduce jet use on Runways 13 and 31 by an additional 2 to 3 percent for both daytime and nighttime hours. (NCP, pages 63, 98, 123, 175, and Table 22)

FAA Action: Disapproved as to Formalizing the Procedure; Continuation of the Current Procedure on a Voluntary Basis Is Approved

The recommendation to formalize the restriction is disapproved because Runway 13/31 would have to be available for operations should Runway 8/26 be closed. Also, it is not clear from the NCP just how much of the noise benefit, described in Table 22 for a combination of three proposed formal preferential procedures, is derived from formalizing this measure.

This procedure may continue on a voluntary basis as traffic, weather, and airspace safety and efficiency permit. The previous part 150 study and Record of Approval summarized this measure's benefits, when implemented as voluntary, as follows: ''The elimination of this measure would dramatically increase direct jet overflights of the close-in residential areas under the extended centerlines of runways at the airport, in areas where jet operations currently are rare. Increased jet use would almost certainly result in a vigorous community reaction.''

2. Extension of Upwind Leg for Runway 31 Departures out to the Turnpike

The City will continue to request that pilots delay turns to crosswind or on course until crossing this visual reference. There is no change proposed to the measure approved by the FAA in 1997. (NCP, pages 64, 176)

FAA Action: Disapproved

The FAA objects to this measure because it may impact aircraft operational safety and efficiency. VFR aircraft in the traffic pattern for Runway 31 must be able to turn crosswind before reaching the Turnpike in order to run a safe and efficient traffic pattern. In addition, continuation of this existing measure is disapproved due to significant increase in air traffic in the area from many airports. The air traffic controllers need to be able to run aircraft as soon as possible and cannot be required to place aircraft in a prescribed flight path with the significant increase in air traffic around FXE.

3. Voluntary Use of Turbojet Noise Abatement Departure Profiles

The City will continue to request that pilots use National Business Aviation Association (NBAA) and manufacturers' turbojet noise abatement departure profiles. This program element must be voluntary, because the pilot in command of the aircraft has the ultimate responsibility for safe aircraft operation. No third party (including the FAA or the City) can dictate cockpit procedures. (NCP, pages 64, 147–148, 176; Figure 50)

FAA Action: Approved as a Continuing Voluntary Measure

4. Runway 26 Departure Heading

Pilots currently are requested to initiate a turn to 310° after crossing NW 31st Avenue (visual conditions) or after passing the Runway 8 middle marker (instrument conditions). The City requests that FAA amend this procedure to implement it on a formal basis, so that it applies to all non-emergency operations (wind, weather, and traffic permitting). The FAA is decommissioning the middle marker. Therefore, the City also requests that the FAA continue the operation of the middle marker as an electronic reference or ''turn marker''. (NCP, pages 64, 103; Figure 38)

FAA Action: Disapproved as to Formalizing the Procedure; Continuation of the Current Procedure on a Voluntary Basis Is Approved, for VFR Traffic Only, as Traffic, Weather, and Airspace Safety and Efficiency Permit

Formalizing this procedure is disapproved because there is no instrument approach to Runway 26, and aircraft are required to fly an ILS approach to Runway 8. This opposite direction operation requires that departing aircraft on Runway 26 turn as soon as possible for safety purposes. For clarification purposes, the Runway 26 departure heading was changed to 315° due to magnetic variation and the opposite-direction departure separation requirement of 45°. The FAA does not currently initiate a turn after crossing NW 31st Avenue/Runway 8 middle marker. Adherence to this procedure is voluntary on the part of the pilot. The Part 150 study approved in 1997 stated, ''This measure reduces the population within the 65 dB Ldn noise contour by 631 people.''

The FAA will not continue to use the middle marker as an electronic reference. As an alternative to using the MM, the airport sponsor may contact the FAA to determine whether the use of Distance Measuring Equipment (DME) may be an appropriate substitute for the electronic reference.

5. Evening and Night (8 p.m. to 7 a.m.) Implementation of ''Quiet One'' Departure Procedure on a Formal Basis

Pilots of eastbound and southbound aircraft currently are requested to use the ''Quiet One'' departure procedure (a climbing left 360° turn to a heading of 090°) on a voluntary basis at night (10 p.m. to 7 a.m.) in visual conditions. The City requests that the FAA amend this procedure to implement it on a formal basis, and to extend the effective hours to run from 8 p.m. to 7 a.m. This procedure is implemented at pilot request only, with ATCT approval. No change is proposed. (NCP, pages 64, 103, 176)

FAA Action: Disapproved as to Formalizing the Procedure and Continuation of the Current Procedure on a Voluntary Basis, as It Allows for Uncontrolled Turns in IFR Airspace in a Very Congested Area

This measure was previously approved as voluntary in 1997 for the nighttime timeframe. It is being disapproved at this time because of the significant increase in air traffic in the area. The concern is that the controllers need to be able to turn aircraft as soon as possible to get them out of the way. (See Measure 10, below, for a similar operational procedure, approved as voluntary.)

6. Night (10 p.m. to 7 a.m.) Implementation of ''Quiet One'' Departure Procedure on a Formal Basis

If the FAA disapproves the preceding formal implementation of the ''Quiet One'' procedure with hours extended to run from 8 p.m. to 7 a.m., the City requests that the FAA approve the procedure on a formal basis effective from 10 p.m. to 7 a.m. in visual conditions. (NCP, pages 64, 103, 176)

FAA Action: Disapproved as to Formalizing the Procedure and Continuation of the Current Procedure on a Voluntary Basis, as It Allows for Uncontrolled Turns in IFR Airspace in a Very Congested Area

This measure was previously approved as voluntary in 1997 for the nighttime timeframe. It is being disapproved at this time because of the significant increase in air traffic in the area. The concern is that the controllers need to be able to turn aircraft as soon as possible to get them out of the way. (*See* Measure 10, below, for a similar operational procedure, approved as voluntary.) Formalizing the turn could place a large number of VFR flights into congested IFR airspace.

7. Support of Airport Perimeter Development as a Noise Barrier

This measure is a continuation of a measure approved by the FAA in 1997. It calls for the City to continue to work with airport tenants to implement this measure as part of any proposed development on the airport perimeter. The structures would be placed in such a manner that they can act as noise barriers addressing aircraft taxi operations for neighboring residences. (NCP, pages 65, 148, 177)

FAA Action: Approved as a Continuing Measure

The airport sponsor has included this recommendation in past NCP studies. The intent of the measure is to promote good placement of facilities built on airport property in a manner that would use the building as a buffer to minimize airport ground-based noise on nearby residences. Any building construction on the airport would be required to comply with applicable Federal requirements.

8. Restriction of Maintenance Runups 7 p.m. Through 7 a.m. at the Runup Pad

The existing NCP includes a restriction that is formally codified in the Aviation section of the Fort Lauderdale City Code. This ordinance restricts the time and location of maintenance runups. No maintenance runups are allowed between 7:00 p.m. and 7:00 a.m. All maintenance runups are limited to a location designated by the ATCT. The designated runup pad is at the decommissioned compass rose located near the southeast corner of the intersection of Runways 8/26 and 13/31. (NCP, pages 65, 151, 177)

FAA Action: Approved as a Continuing Measure

This measure has been approved by the FAA in past NCPs and has eliminated complaints from nearby residences about ground runup noise. Figure 53 shows that placement of the runup area is close to land uses designated as manufacturing and production.

9. Nighttime Preference for Runway 26 Departures and Runway 08 Arrivals, for All Aircraft

This measure maximizes operations over the less developed areas west of the airport. This bi-directional runway use is feasible at night because winds are calmer, operations levels are lower at night, and the ATCT is open all night, ensuring the safe and optimal use of the procedure. The city makes an annual payment out of airport funds to staff the ATCT at night to permit implementation of this measure and to maximize the effectiveness of other nighttime measures. The City requests that the FAA amend this measure to implement it as a formal preferential runway program element. (NCP, pages 63, 98, 122, 178; and Table 22)

FAA Action: Disapproved as a Mandatory Formalized Procedure; Continuing This Measure on a Voluntary Basis, When Wind Weather, and Airspace Safety and Efficiency permit Is Approved

Formal implementation of this procedure is disapproved. The noise abatement flight path is infrequently used, and initiated only upon pilot request. This opposite direction operation requires that departing aircraft on Runway 26 turn as soon as possible for safety purposes. Opposite direction operations on the same runway lower the margin of safety.

The current NCP shows that Runway 26 nighttime departures are carried out about 55 percent of the time by jet aircraft, and 35 percent of the time for propeller aircraft. Runway 8 nighttime arrivals by jets occur approximately 70 percent of the time and approximately 60 percent of the time by propeller aircraft. The present nighttime departure rate is an improvement over the base case runway use reported when the measure was originally recommended in the mid-1980's (20 percent for all operations). The 1997 NCP stated: ''This measure results in a reduction of 31 people within the 65 dB Ldn noise contour and operates in conjunction with the noise abatement flight path for Runway 26 departures (turn to a heading of 310 degrees).'' (*See* Measure 4 in this Record of Approval.)

10. Runway 08 Departure Heading

Presently turbojets with destinations other than eastbound are assigned heading 330 degrees, and non-eastbound propeller aircraft are assigned 300 degrees, with instructions to initiate turns abeam of I–95. All eastbound departures are assigned heading 090. The City requests that the FAA amend the existing I–95 turn as a mandatory, formal instrument procedure under FAA radar control, applicable to all aircraft, wind, weather, and traffic permitting. A 90 degree heading would be assigned when required to avoid potentially unsafe traffic conflicts. (NCP, pages 64, 103, 111, 117–118, 178; Figure 43; and Tables 18, and 33)

FAA Action: Disapproved as a Mandatory, Formal Instrument Procedure; Approved as a Continuation of an Existing Voluntary Measure When Traffic, Weather, and Airspace Safety and Efficiency Permit Between the Hours of 11 p.m. and 7 a.m.

This measure is disapproved as a mandatory, formal instrument procedure. Air traffic has significantly increased in this corridor since the 1997 approval of the voluntary procedure. Formalizing this departure procedure by turning all turbojet aircraft on this heading creates a safety issue due to the air traffic congestion in the south Florida area when traffic is other than light.

The Letter of Agreement between the Miami ATCT and FXE ATCT was revised August 1, 2004, to require that ATCT assign a heading of 330° to all turbojet aircraft departing Runway 8 between the hours of 11 p.m. and 7 a.m. (this excludes emergency Lifeguard flights). The measure may be extended at the discretion of ATCT to 8 a.m. if traffic, weather, and airspace safety and efficiency permit. The 1997 NCP stated: ''The elimination of this procedure would approximately double the population within the 65 dB Ldn contour.'' The FAA approved the measure in 1997 as voluntary. This NCP states that without the existing measure in place, ''the population within the contours more than doubles from 730 to 1801, clearly indicating the effectiveness of this existing measure.'' The VFR turn abeam I–95 is voluntary on the part of the pilot and ATCT does not issue turns abeam I–95.

11. Restriction of Night, Weekend, and Holiday Touch-and-Go Operations and Practice Approaches on a Voluntary Basis

Expand the existing voluntary night (10 p.m. to 7 a.m.) touch-and-go restriction to encompass touch-and-go and practice-approach training operations at night, and on a 24-hour basis on weekends and City holidays. This measure is predicted to reduce the number of people within the 65 DNL noise contour from 730 to 700. (NCP, pages 65, 127–131, 178; Figure 46; Tables 25, 26, and Table 33)

FAA Action: Approved as a voluntary measure

12. Raise the Approach Slope on All Runway Ends to 3.5°

This measure calls for raising the Runway 8 approach slope to 3.5°. It also requires the City to raise the PAPI angles to 3.5 degrees on all runway ends, with FAA approval. The city would publicize these changes. It should be noted that a glide slope angle above 3 degrees on a runway with an ILS such as Runway 8, is considered exceptional and requires special FAA approval. Figure 48 presents the resulting contours, which show contour shrinkage immediately under the extended runway centerlines. The population within the contours falls by an estimated 74 residents. (NCP, pages 139, 179; Figure 48, and Tables 28, 29, and 33)

FAA Action: Disapproved for Purposes of FAR Part 150

FAA has not raised the approach slope for other than safety reasons, to maintain cockpit proficiency. Further, at FXE, if the approach minimums were raised it would prohibit access to the aircraft by Category D aircraft due to the airport's runway length.

13. Future Use Restriction if Implementation of Operational Measures Does Not Meet Objectives

The City will monitor the jet fleet mix, and implementation and effectiveness of noise abatement measures, to determine whether the projected retirement of non-Stage 3 jets, combined with operational measures, accomplishes two objectives: (1) Eliminating residential and other potentially non-compatible land uses within the 65 DNL contour, and (2) eliminating all Runway 08 straight-out (090° heading) jet departures, with the exception of those required by emergency or safety conditions. If these objectives are not met, the City will initiate the analysis of use restriction options that might provide similar noise benefit. The scope of the study will include, but not be limited to: (1) Restriction of Stage 1, or Stage 1 and 2 operations; (2) single event noise level limits; (3) night operating restrictions; and (4) feasible enforcement mechanisms and penalties for violations. (NCP, pages 143–147; Figure 49; and Tables 30, 31, and 33).

FAA Action: Approved for Further Study

Recommendations in this NCP for formalizing measures have not been approved due to potential impacts on efficient use and management of the navigable airspace and potential reduction in the level of aviation safety presently provided. Predicted reductions of impacts on the noise contour by formalizing these measures will, therefore, not be fully realized. There is no forecast year NEM without these formalized measures in place, so the population within the 2007 noise contour is not known (the forecast case 2007 noise contours include the noise abatement elements of the ''operational composite case''). Implementing the approved measures within this ROA appears to provide a benefit by removing the DNL 65 dB noise contour from about 30 to 70 people (*see* Table 33, page 157). The 2002 base case shows that a total of 730 people reside within the DNL 65 dB noise contour. It should be noted that FAA will not accept as justification for an airport noise or access restriction new noncompatible development that occurs within the airport's published NEM contours.

Land Use Measures

Based on the projection that there will be no noncompatible land uses within the DNL 65 dB noise contour in 2007, with implementation of the noise abatement elements of this revised NCP, no new land use measures are recommended. It is recommended that the revised NCP continue to include the existing compatible land use measures to prevent development of new noncompatible uses to the extent feasible. (NCP, page 167).

1. Rezoning Noncompatible Property as Opportunity Arises

City staff members continue to monitor areas within existing and forecast NEM to identify opportunities for rezoning. The very limited noncompatible areas of land within the contours and the highly developed nature of those areas limit opportunities. (NCP, pages 65, 167).

FAA Action: Approved as a Continuing Measure

2. Local Jurisdictions To Incorporate Noise Requirements Into Development Control

The City has requested that local jurisdictions adopt the noise requirements on a case-by-case basis (NCP, pages 65, 167, 180)

FAA Action: Approved as a Continuing Measure

3. Voluntary Fair Disclosure by Real Estate Agents

This measure is an informal educational effort. Information is disseminated through newsletters and presentations to all the local governments in the ares as well as realtors, other businessmen and residents. The community Advisory Committee also serves as an ongoing conduit of revised noise-related information. (NCP, pages 65, 167, 180)

FAA Action: Approved as a Continuing Measure

4. Monitor Noise To Determine Exact Extent of Contour Into Residential Area

The City installed permanent noise monitor number 6 in Village Park Mobile Home Park (NCP, pages 66, 167, 180; Figure 54)

FAA Action: No Action Required

This measure was approved by the FAA in the 1997 NCP, and the City has implemented the action.

5. Noise Abatement Advisory Committee

The City will continue to implement this program element through the monthly meetings of the Aviation Advisory Board (AAB). The AAB; receives a report on the NCP implementation and status and statistics on compliance with noise abatement measures. (NCP, page 66, 169, 180)

FAA Action: Approved as a Continuing Measure

6. Noise Abatement Officer

Supplement part-time responsibilities of the FXE Airports Program Manager and Airports Programs Aide with addition of a dedicated ''Noise Abatement Technician'', to focus on day-to-day and month-to-month responsibilities, and assist the more senior staff on specialized program requirements. This is a dedicated staff position for which the city will be responsible for the cost. (NCP pages 66, 161, 181)

FAA Action: Approved

7. Permanent Noise and Operations Monitoring System

The City proposes to implement enhancements to the existing ANOMS installation to ensure the system continues to provide appropriate monitoring coverage in a state-of-the-art fashion. The enhancements will include five additional permanent noise monitors, upgraded central computer hardware and software, and enhancements to the flight tracking and identification system to provide more specific aircraft identification through monitoring of Mode C transponder transmissions. The expanded geographic coverage and age of the system installation also justify an upgrade to the central ANOMS hardware and software. The current system is based on UNIX operating platform; modern systems are Windows-based. (NCP, page 66, 171, 181)

FAA Action: Disapproved Pending Submission of Additional Information

Other than the location of one of the five proposed new monitors (under the Runway 13/31 extended centerline and identified as ''B'' in the 2002 NEM Figure 53), the documentation does not show where these new monitors will be located within the official NEM noise contours. Measures submitted in a NCP for approval must be located within the sponsor's NEM contour (14 CFR part 150, section 150.23(e), and 49 U.S.C. 47504(a)(2)) and must otherwise be shown to satisfy part 150 approval requirements.

8. Public Information Program

The FXE staff and other City staff provide regular reports to the AAB, and ad hoc reports to other interested groups as requested. (NCP, pages 66, 172, 181)

FAA Action: Approved as a Continuing Measure

9. Airfield Noise Abatement Advisory Signs

The City has installed noise abatement signage at key locations on the airfield, notifying pilots of major noise abatement concerns. No additional or modified signage is required at this time. However, any such new or modified signage would be eligible for up to 90 percent FAA and 5 percent FDOT grants. (NCP, pages 67, 172, 182)

FAA Action: Disapproved

The NCP states that no additional or modified signs are required at this time, so this measure is not a necessary element of this NCP. Signs must not be construed as mandatory air traffic procedures. The content and location of airfield signs are subject to specific approval by appropriate FAA officials outside of the FAR Part 150 process and are not approved in advance by this determination.

10. Pilot Manual Noise Abatement Insert

The City prepares and distributes a revised pilot noise abatement handout in a format that is compatible with a Jeppessen-sanderson manual. Following the FAA's review and approval of this NCP, the City should revise the existing insert to reflect program changes and redistribute it to pilots, FBOs, and other operators. (NCP, pages 67, 172, 182)

FAA Action: Approved as a Continuing Measure

Language in revised inserts should accurately reflect FAA actions on this revised NCP. Inserts must not be construed as mandatory air traffic procedures. The content of the inserts are subject to specific approval by appropriate FAA officials outside of the FAR Part 150 process and are not approved in advance by this determination.

11. NEM/NCP Review and Revision

The City will continue existing NEM and NCP review and revision practices, as necessary. The City will also update the NCP, if made necessary by NEM revision. The city utilizes information from a variety of sources to monitor the accuracy of the NEMs and the effectiveness of the NCP, including: ANOMS monitoring, citizen reports, FAA ATCT traffic counts. The city uses these sources to determine if operations have changed sufficiently to require an NEM update (e.g., difference of more than 15 percent in operations, or if new noncompatible uses due to changes in operations, or if the NCP requires a revision). (NCP, pages 67, 172, 182)

FAA Action: Approved

12. ATIS Noise Abatement Advisory

The City will continue to request incorporation of noise abatement advisory information on the ATIS recording. (NCP, pages 67, 173, 182)

FAA Action: Disapproved

Revised Order 7110.65, Air Traffic Control, no longer provides for noise abatement advisories. Noise abatement advisories may be published in the Airport Facilities Directory and pilot handouts.

13. Achievements in Community Excellence (ACE) Awards

The City will continue to provide Achievement in Community Excellence (ACE) awards program to encourage aircraft operators, through a program of positive recognition, to comply with the NCP noise abatement elements to the maximum feasible extent. The city has provided ACE awards to ten different companies since 1998. (NCP, pages 67, 173, 183)

FAA Action: Approved as a Continuing Measure

14. Pilot Noise Abatement Workshops

The City will continue to hold these sessions, as another mechanism for publicizing noise abatement measures, goals, and implementation status, and for educating pilots. The city has organized and conducted several workshops, two or three times a year. (NCP, pages 67, 173, 183)

FAA Action: Approved as a Continuing Measure

These determination are set forth in detail in a Record of Approval signed by the FAA on January 14, 2005. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Fort Lauderdale, Florida. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Orlando, Florida, on January 5, 2005.

Bart Vernace,

Acting Manager, Orlando Airports District Office.

[FR Doc. 05–1921 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor, Cargo, and Nonprimary Entitlement Funds for Fiscal Year 2005

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2005, as the deadline for each airport sponsor to notify the FAA that it will use its fiscal year 2005 entitlement funds to accomplish projects identified in the Airports Capital Improvement Plan that was formulated in the spring of 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Molar, Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION: Section 47105(f) of title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those airports that have received such entitlements, except those nonprimary airports located in designated Block Grant States. Notification of the sponsor's intent to apply during fiscal year 2005 for any of its available entitlement funds including those unused from prior years, shall be in the form of inclusion of projects for fiscal year 2005 in the Airports Capital Improvement Plan.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by May 1, 2005, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f), FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2005.

Issued in Washington, DC, on January 14, 2005.

Barry L. Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 05–1918 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter Horton, Director of Airports of the Monroe County Board of County Commissioners at the following address: Key West International Airport, 3491 S. Roosevelt Boulevard, Key West, Florida, 33040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monroe County Board of County Commissioners under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando FL, 32822, (407) 812–6331, extension 120. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 25, 2005, The FAA determined that the application to impose and use the revenues from a PFC submitted by Monroe County Board of County Commissioners 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 11, 2005.

The following is a brief overview of the application.

PFC Application No.: 05–09–C–00–EYW.

Level of the proposed PFC: $4.50.

Proposed charge effective dates: July 1, 2005.

Proposed charge expiration date: November 1, 2005.

Total estimated net PFC revenue: $361,645.

Brief description of proposed project(s): PFC Application; Construct New Terminal (Phase 3); Construct Safety Area, Runway 9/27 (Phase 3); Noise Improvement Program, Renovate 50 homes (Design & Construction); Install Perimeter Fencing (Phase 2); Approach Clearing, Runway 9/27; Construct Taxiway A Extension (Phase 2) & T–Hanger Taxiways (at Florida Keys Marathon Airport, MTH); Rehabilitate Terminal Canopy, Phase 2 (MTH); Relocate Wind Sock & Segmented Circle (MTH): Acquire Back-up Generator for Airport Beacon (MTH).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Commercial Air Carriers with less than one percent (1%) of total passenger enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County Board of County Commissioners.

Issued in Orlando, Florida, on January 26, 2005.

Bart Vernace,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 05–1922 Filed 2–1–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub–No. 4)]

Railroad Cost Recovery Procedures–Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.035 (3.5%) as the measure of average change in railroad productivity for the 1999–2003 (5-year) period. The current value of 2.2% was developed for the 1998 to 2002 period.

DATES: Comments are due February 16, 2005.

EFFECTIVE DATE: The proposed productivity adjustment is effective March 3, 2005.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 25, 2005.

By the Board, Chairman Nober, Vice-Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1909 Filed 2–1–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34652]

BNSF Railway Company [1]—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to the BNSF Railway Company (BNSF) over UP's rail line between Stockton, CA, UP milepost 88.90 (Fresno Subdivision) and Bakersfield, CA, UP milepost 313.6 (Mojave Subdivision), a distance of approximately 225 miles.

The transaction was scheduled to be consummated on January 23, 2005, and the temporary trackage rights are intended to expire on February 5, 2005. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out of service due to programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union-General Committee of Adjustment (GO–386)* v. *Surface Transportation Board*, No. 03–1212, 2004 U.S. App. LEXIS 6496 (D.C. Cir. Apr. 6, 2004), any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34652, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 26, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1908 Filed 2–1–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Effective January 20, 2005, the name of "The Burlington Northern and Santa Fe Railway Company" was changed to "BNSF Railway Company."

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–154000–04]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning proposed rulemaking regulations, REG–154000–04 Notice of Proposed Rulemaking) Diesel Fuel and Kerosene Excise Tax; Dye Injection.

DATES: Written comments should be received on or before April 4, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Notice of Proposed Rulemaking; Diesel Fuel and Kerosene Excise Tax; Dye Injection.

OMB Number: 1545–1418.

Regulation Project Number: REG–154000–04.

Abstract: In order for diesel fuel and kerosene that is used in a nontaxable use to be exempt from tax under section 4082(a), it must be indelibly dyed by use of a mechanical dye injection system that statisfies the requirements in the regulations.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Revision of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2005.

Paul Finger,

IRS Reports Clearance Officer.

[FR Doc. 05–1950 Filed 2–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen to Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 2004.

LNAME	FNAME	MNAME
KISPERT	IRMGARD.	
Woodell	Rebecca	G.
Browning	James	D.
HEIER	ROLF	OISTEN.
LEE	PAUL	SEUNG WHAN.
NELSON	GEORGE	NICHOLAS.
SKARHEIM	ODD	PETTER RICHEY.
WARDAK	TAJ	MOHAMAD.
JONES-WELLS	CAROLINE	MARGARETHE.
NILSEN	SHARI	EVELYN GERBER.
GOODEN	RONALD.	
DELCARPIO	JORGE.	
CHEUNG	TZE-LAN	JULIA.
FANG	FANG.	
DERMER	SAMMY.	
WU	LI-PEI.	
SNEED	CHRISTOPHER	ALAN.
REGAN	TIMOTHY	MARC.
FORLIVIO	DANIEL	MAXIMILIAN.
LEWIS	SHAWN	ALAN.
NEWHALL	LESLIE	ANN.
SMOOTZ	MARY	FRANCES.
CLUNE	CHRIS.	
GJELLAND	SANDRA	LOUISE.
MENZEL	CAROLINE	ELEONORE.
COTTEN	LUCENA	ELIZABETH.
COTTEN	ANN	MARIE.
RODRIGUEZ	SOLVEIG.	
DI LUZIO	KARI	FLOYD.
BURROUGH	IRENE	MARY.
WINDRUM	ELIZABETH	BALLANTYNE.
LEVIN	DANIEL	JOSEPH.
LEVIN	AGILE.	
FURUHAMA	AYAKO.	
FALL	OLGA.	
WILLIAMS	LOUISE	CROUCHLEY.
OJJEH	LIA	MYRIAM.
MAZUMDER	RAQUIB	RAHMAN.
AL ZAKI	AJLAN WAHEED	HASAN IBRAHIM ABDULLA.
LARSEN	PER	JAN.
RUSHTON	HENRY	RICHARD LEEPER.

LNAME	FNAME	MNAME
GRAY	TIMOTHY	BRANT.
BASSLER	PAUL	GERHARD.
WIEDEMANN	PAUL	PAT.
SCHOENEBERG	ANDREAS.	
STEINBACH	ADOLF.	
HALOFF	HILDEGARD.	
DI LUZIO	ROBERT	SALVATORE.
ROTHSTEIN	MICHAEL	WOLFGANG.
FENN	KLAUS	DIETER.
MCVEIGH IV	CHARLES	SENFF.
ROZANSKI	NICHOLAS	ANDREW.
DASKALOPOULOS	ANGELIKA	D.
BALDERSON	AMY	ELLEN.
KULHAVY	EDITH	MARGOT.
SARASIN	DIMITRI	JEAN.
VISCONTI	ANTOINETTE	DEVEREUX.
IYER	VIJAY.	
LALVANI	DINESH.	
SWICK	HYON	SUN.
BUTLER	PER	JENS.
GOODROW	GERARD	ANDREW.
KIM	KYUNG MIN	CHRISTINA.
KRYNEN	BERNADETTE	ANNE.
BASU	KUHU.	
THEIS	HELGA	MARINA.
PASSE-TIETJEN	RITA	JOAN.
GUILL	JANINE	ANN.
FUNK	STEVEN	CHRISTOPHER.
FERGUSON	DONALD	ROY.
DIAS	DEBORAH	A.
VAIZEY	JOCELYN	DE HORNE.
JENKIN	ANN.	
CABANISS	RICHARD	JENNINGS.
GIFFORD	JOAN	ELLEN HUDSON.
BAJER	MARC	EDWARD.
OLSON	MICHAEL	ALAN.
KOHLER	DANIEL	FRIEDRICH.
STROMER	THOMAS	EDUARD.
LYTTON-COBBOLD	HENRY	FROMANTEEL.
TING	ALBERT	KWANG-CHIN.
NUTTER	GEORGE	ERIC.
NUTTER	GLENYS.	
SCOTT	WILLIAM	PAUL.
FORTNER	STEPHANIE	ANN.
CLARK	PAUL	STANLEY.
HUCKABEE	POK	SUN.
SONG	SOOCK	WEON.
KWAN	YANY	YAN-CHI.
CHANG	YA-MEI.	
PONCE	CARLOS	ALBERTO JOSE.
ADAMS	GERALD	KENNETH.
KIM	ANNIE	YOUNG.
KIM	YONGA.	
AHN	YOUNG	KWON.
WELLS	MARIE	ELISE.
HUH	STEVEN.	
YI	GEUN-JUNG.	
FRILEY	CHARLES	DANA.
CHUNG	STEVE.	
KIM	JI	SANG.
POOLE	YUMEE	KIM.
CHONG	KIL	NAM.
HONG	JEONGDO	ALFRED.
KIM	CHA	YE.
PAULSEN	MARLYS	ANN.
STORESUND	KENNETH	MAGNUS.
KONGEVOLD	KRISTY	MARIE.
DARRAH	RICHARD	PAUL.
KIM	RONALD.	
CARLSSON	CARINA	MAJ.
GRINDHEIM	ROLAND	DEAN.
PETERKA	DOROTHEA	ANNE.
KNUTSEN	SUSAN	VIVIAN.
MURASE	ATSUSHI.	

LNAME	FNAME	MNAME
HAMDI	YASER	ESAM.
FAZEL	FAZEL	RAHMAN.
GORDON	DENNIS	LEE.
WATTS	GEORGE	FOSTER.
EKMAN	GUNNAR	ERIK.
GONZALEZ	ALBERTO.	
MUMFORD	MARC	WILLIAM.
LO	TAYO.	
SHIME	SANDRA	J.
UTTER	ROBERT	ERIC.
MCVEIGH III	CHARLES	S.
JENKINS III	ROBERT	EDWARD.
SULLIVAN	CHARLES	ROBERT.
WEBER	JOHANNES.	
MCCRACKEN	MARTIN	LEWIS.
MCCRACKEN	MARTIN	LYNN.
TIMERMAN	HECTOR	MARCOS.
ADDERLY	DONALD	BRADFIELD.
LESEUR	MARY	MONICA.
BUTLER	KEVIN	CHARLES.
PETERSON	EDWARD	HUGH CHARLES.
LEE	YOON	WON.
SHAY	KAREN	MARIE.
MCEACHERN	JEANETTE	FRANCES.
PLOWMAN	JOAN	MARGARET.
HERMSDORF	MARIANNE	PFISTER.
BLACK	CHARLES	WILLIAM.

Dated: January 13, 2005.

Angie Kaminski,

Examination Operation, Philadelphia Compliance Services.

[FR Doc. 05–1951 Filed 2–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, March 3, 2005 from 12 p.m. to 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, March 3, 2005, from 12 p.m. to 1 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–1948 Filed 2–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 1, 2005 from 11 a.m. to 12 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, March 1, 2005, from 11 a.m. to 12 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: January 28, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–1949 Filed 2–1–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Sal Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 254–0473; e-mail at: *saleem@vard.org.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

U.S. Provisional Patent Application No. 60/580,727 ''Surgically Implantable Perineal Urinary Incontinence Device''

Dated: January 26, 2005.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 05–1998 Filed 2–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Sal Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue NW, Washington, DC 20420; fax: (202) 254–0473; e-mail at: *saleem@vard.org.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

US Provisional Patent Application No. 60/566,099 ''Transgenic Screen and Method for Screening Modulators of Brain-Derived Neurotrophic Factor (BDNF) Production Utilizing Pufferfish BDNF Gene Promoters''

Dated: January 26, 2005.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 05–1999 Filed 2–1–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Thursday and Friday, February 17 and 18, 2005, from 8 a.m. until 4:30 p.m. on both days, at The American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to review the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

The agenda for February 17 will focus on military service-related needs of returning combatants from the war on terrorism in Afghanistan and Iraq. Particular attention will be given to the unique post-deployment needs of National Guard and Reserve personnel. The day's activities will also cover the coordination of services between VA and the Department of Defense to ensure continuity of care and a seamless transition for returning war veterans.

On February 18, the Committee will be provided with an update of the current activities of the Readjustment Counseling Service Vet Center program to outreach and serve the veterans returning from Afghanistan and Iraq. The agenda for February 18 will also include strategic planning activities to formulate goals and objectives for the coming year. In addition, the Committee will formulate recommendations for submission to Congress in its annual report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee in advance of the meeting to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs (15), 810 Vermont Avenue, NW., Washington, DC 20420. Those who plan to attend or have questions concerning the meeting may contact Mr. Flora at (202) 273–8969 or *charles.flora@hq.med.va.gov.*

Dated: January 19, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–1964 Filed 2–1–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 70, No. 21

Wednesday, February 2, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–01–AD; Amendment 39–13943; AD 2005–01–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 100, 200, and 300 Series Airplanes

Correction

In rule document 05–716 beginning on page 2941 in the issue of Wednesday, January 19, 2005 make the following correction:

§39.13 [Corrected]

On page 2942, in the third column, § 39.13(c), the table should appear as follows:

Model	Serial Nos.
(1) A100–1 (U–21J) ..	BB–3 through BB–5
(2) 200 and B200	BB–2 and BB–6 through BB–1462.
(3) A200 (C–12A) and A200 (C–12C).	BC–1 through BC–75 and BD–1 through BD–30.
(4) A200C (UC–12B)	BJ–1 through BJ–66.
(5) A200CT (C–12D).	BP–1, BP–22, and BP–24 through BP–51.
(6) A200CT (FWC–12D).	BP–7 through BP–11.
(7) A200CT (RC–12D).	GR–1 through GR–13.
(8) A200CT (C–12F)	BP–52 through BP–63.
(9) A200CT (RC–12G).	FC–1 and FC–3.
(10) A200CT (RC–12H).	GR–14 through GR–19.
(11) A200CT (RC–12K).	FE–1 through FE–9.
(12) A200CT (RC–12P).	FE–10 through FE–24.
(13) A200CT (RC–12K).	FE–25 through FE–31.
(14) 200C and B200C	BL–1 through BL–72 and BL–124 through BL–138.
(15) 200CT and B200CT.	BN–1 through BN–4.
(16) 200T and B200T	BT–1 through BT–38.
(17) B200C (C–12F)	BL–73 through BL–112 and BL–118 through BL–123.
(18) B200C (C–12F)	BP–64 through BP–71.
(19) B200C (UC–12F)	BU–1 through BU–10.
(20) B200C (UC–12M).	BV–1 through BV–12.
(21) B200CT	FG–1 and FG–2.
(22) 300	FA–1 through FA–228.
(23) 300	FF–1 through FF–19.
(24) B300	FL–1 through FL–103.
(25) B300C	FM–1 through FM–8.
(26) B300C	FN–1.

[FR Doc. C5–716 Filed 2–1–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–04–C–00–SAT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Antonio International Airport, San Antonio, TX

Correction

In notice document 05–123 beginning on page 936 in the issue of Wednesday, January 5, 2005, make the following correction:

On page 936, in the third column, under the heading ''**DATES**'', in the second line, ''January 4, 2005'' should read ''February 4, 2005''.

[FR Doc. C5–123 Filed 2–1–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,

February 2, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183
Aging Airplane Safety; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Amendment Nos. 119–6, 121–284, 129–34, 135–81, and 183–11]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; disposition of comments.

SUMMARY: This action adopts the interim final rule published on December 6, 2002, as a final rule with changes. The IFR imposed statutory requirements from the Aging Aircraft Safety Act of 1991 for certain airplanes to undergo inspections and records reviews after their 14th year in service and at specified intervals after that. Also, the rule imposed a requirement to include supplemental inspections by specified deadlines in the maintenance programs for these airplanes. With this action, the FAA responds to comments to the IFR, further clarifies parts of the rule language, and substantially revises the supplemental inspection requirements.

DATES: The interim final rule became effective December 8, 2003. This final rule becomes effective March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Aircraft Maintenance Division, AFS–308, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone can search the electronic form of comments to any of our dockets using the name of the individual who sent the comment. You can also search by the person who signed the comment if, for example, an association, business, or labor union, sent the comment. You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm.*

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements and Section 44717, Aging aircraft. Under section 44701 the Administrator is charged with prescribing ''regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances.'' Under section 44717 the Administrator is charged with prescribing ''regulations that ensure the continuing airworthiness of aging aircraft.'' In accordance with those regulations the Administrator must ''make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in a safe condition and maintained properly for operation in air transportation.'' These inspections and reviews ''shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service.''

This regulation is within the scope of section 44701 since it establishes requirements and minimum standards for the inspection of aging aircraft and establishes requirements for the inclusion of supplemental inspections in aircraft maintenance programs. Additionally, the regulation specifically responds to the statutory mandate prescribed in section 44717 by establishing a requirement for certain airplanes to undergo inspections and records reviews after their 14th year in service and at specified intervals thereafter.

Background

This final rule adopts the interim final rule (IFR) published at 67 FR 72726 on December 6, 2002, as a final rule with changes. The provisions of the IFR became effective on December 8, 2003. The rule resulted from requirements placed on the FAA by the Aging Aircraft Safety Act (AASA) of 1991. Section 402 of the AASA requires the Administrator to ''initiate a rulemaking proceeding for the purpose of issuing a rule to assure the continuing airworthiness of aging aircraft.''

Specifically, the AASA requires ''the Administrator to make such inspections and conduct such reviews of maintenance and other records of each aircraft used by an air carrier to provide air transportation as may be necessary to determine that such is in a safe condition and is properly maintained for operation in air transportation.'' Further, the AASA states an air carrier must show, as part of the inspection, ''that maintenance of the aircraft's structure, skin, and other age-sensitive parts and components have been adequate and timely enough to ensure the highest degree of safety.'' Title 14, Code of Federal Regulations (14 CFR) §§ 121.368, 129.33, 135.422, and 135.423 of the IFR cover the AASA's requirements for airplane inspections and records reviews.

Additionally, the FAA found it necessary to initiate a consistent approach to preserve the continued airworthiness of the airplane structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. Sections 121.370a, 129.16, and 135.168 of the IFR include supplemental inspection requirements that address the continued airworthiness of this type of airplane structure. These sections require operators to use damage-tolerance-based inspections and procedures to maintain the continued airworthiness of the affected airplane structure. However, certain operators of airplanes initially certificated with nine or fewer passenger seats and used in scheduled operations could use service-history-based inspections to meet these requirements. The damage-tolerance (DT) based inspections and procedures required in these sections are based on the same methodology identified in 14 CFR 25.571 (Damage-tolerance and fatigue evaluation of structure). This methodology has been used successfully to develop supplemental structural inspection programs (SSIP) and repair assessment guidelines (RAGs) for pressurized fuselages. Therefore, the FAA has determined that this methodology is an acceptable approach to maintaining the continued airworthiness of the affected airplane structure.

IFR Revised by Technical Amendment

The FAA published a technical amendment (68 FR 69307) on December 12, 2003, to the Aging Airplane Safety IFR. This amendment made minor technical changes to the IFR.

Aging Airplane Program Activities

The FAA's Aging Airplane Program came about to address airplanes operated beyond their original design service goals, the 1988 Aloha B–737 accident, and the Aging Aircraft Safety Act of 1991. When the program first started, the goal was to preserve the structural integrity of the aging airplane fleet by requiring structural modifications and inspections to address certain design deficiencies that could lead to airplane structural damage. Following the 1996 TWA 800 B–747 accident, the FAA expanded the Aging Airplane Program to include non-structural systems. The goal was to address requirements for design, inspection, repair, and maintenance of fuel tanks and electrical wiring on aging airplanes. Efforts related to Aging Airplane Program initiatives have resulted in the issuance of airworthiness directives (ADs) and rulemaking actions. Such actions include this Aging Airplane Safety rule, which addresses airplane structure.

The FAA's Review of the Aging Airplane Program

Because of issues raised by industry about the effectiveness and efficiency of the Aging Airplane Program, the FAA recently performed a comprehensive review of it. The goals of this review were to—

- Identify how to most effectively align rulemaking initiatives to ensure there are no overlapping or redundant requirements;
- Ensure that design approval holder data supporting operator compliance are available and timely; and,
- Ensure the resulting maintenance requirements allow operators to be more efficient in revising their maintenance programs when addressing multiple, similar initiatives.

The Aging Airplane Safety IFR was among the rules and proposals included in the FAA's aging program review. The FAA determined that better aligning certain compliance dates in existing rules and pending proposals and making certain substantive changes to them would increase their cost-effectiveness without compromising safety. As a result, the FAA has made changes to the Aging Airplane Safety IFR and has clarified parts of the rule language in the IFR. Also, the FAA has made changes to other aging program rules.

Additionally, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop damage tolerance (DT) guidelines to support compliance with §§ 121.370a and 129.16 of the Aging Airplane Safety rule in response to comments to the IFR (69 FR 26641, May 13, 2004). Further, based on comments to the IFR, the FAA is considering proposing a new rule to require type certificate and supplemental type certificate holders to develop DT programs that will support compliance with the Aging Airplane Safety final rule.

On July 30, 2004, the FAA published a final rule with request for comments entitled, Fuel Tank Safety Compliance Extension and Aging Airplane Program Update, (69 FR 45936). You may refer to that document for more details about the FAA's review of the Aging Airplane Program initiatives and the results of the review.

Changes to the IFR

Based on the FAA's recent review of the Aging Airplane Program and the comments to the Aging Airplane Safety IFR, we believe certain revisions and clarifications to the IFR are proper. These changes are intended to retain the rule's safety objective while reducing the burden on the industry. The major changes, which pertain to the supplemental inspections requirements in §§ 121.370a, 129.16, and 135.168 are listed below and are described in detail later in this preamble.

- Removal of certain DT-based supplemental inspection requirements for airplanes operated under parts 121 and 129.
- Extension of the compliance date and narrowing of the airplane applicability for the DT-based supplemental inspection requirements that remain in the final rule for airplanes operated under parts 121 and 129.
- Removal of the supplemental inspection requirements for part 135 airplanes.
- Clarification of the type of airplane structure the supplemental inspection requirements cover.

Discussion of Comments

The FAA sought and received comments to the interim final rule (IFR).

General Comments

Comment: Several commenters express concern the FAA did not seek recommendations from the ARAC to develop the IFR. The commenters ask the FAA to explain why the agency did not seek ARAC's advice. One commenter wants the FAA to refer the IFR to the ARAC for final review and completion so the rule could more easily be harmonized with foreign Civil Aviation Authorities' (CAAs) requirements.

FAA Response: This final rule is based on a congressional mandate imposed by the Aging Aircraft Safety Act (AASA) of 1991. Therefore, rather than seeking recommendations, the FAA used the terms of the AASA to develop the Aging Airplane Safety rule. However, based on requests from the Air Transport Association (ATA) and others from the industry, the FAA recently tasked ARAC (69 FR 26641, May 13, 2004) to develop guidelines that would support industry's compliance with §§ 121.370a and 129.16 of this final rule. Since Congress mandated the terms of the Aging Airplane Safety rule, the FAA believes it would not have been proper to refer the rule to ARAC, solely to harmonize it with foreign CAAs' actions.

Airplane Inspections and Records Reviews

Comment: A commenter suggests the FAA modify the recordkeeping requirements of the IFR.

FAA Response: The commenter did not provide specific recommendations about how to modify the recordkeeping requirements of the rule. However, as part of the FAA's review of the Aging Airplane Program, the FAA withdrew the Corrosion Prevention and Control Program (CPCP) proposed rule (69 FR 50350, August 16, 2004). Therefore, the FAA has amended the Aging Airplane Safety IFR to remove from §§ 121.368, 129.33, and 135.422, the requirement for operators to provide the current status of CPCPs as a separate item. Instead, they will provide this information as part of the requirement for the current inspection status of the airplane.

However, for those CPCPs mandated by airworthiness directive (AD), they will provide it as part of the requirement for the current status of ADs.

In addition, the FAA has removed the requirement from §§ 121.368, 129.33, and 135.422 of this final rule for operators to provide the current status of the inspections and procedures required under the supplemental inspection portion of the IFR. The FAA removed this requirement because under the terms of the final rule, operators must provide this information as part of the current inspection status of the airplane.

Comment: One commenter requests the FAA include a definition for ''age-sensitive parts'' in 14 CFR part 1.

FAA Response: For purposes of this rule, the FAA considers this term to mean those structural parts and components that are susceptible to fatigue cracking that could contribute to a catastrophic failure. Although the FAA has not defined age-sensitive parts in 14 CFR part 1, we will include this definition in the related advisory material.

Comment: One commenter requests the FAA amend the regulation to allow the use of Organizational Designated Airworthiness Representatives (ODAR) to perform the inspections and records review required by § 121.368. Several commenters address the use of Designated Airworthiness Representatives (DARs) to perform the required inspections and records reviews. The commenters are concerned with access to enough inspectors to perform the necessary inspections. One commenter states that to carry out the required inspections and records review, every air carrier will need at least two or three DARs. The commenter says this would require a greater commitment by the FAA to qualify many more DARs than they have in the past. Another commenter states they would need access to a DAR or Principal Maintenance Inspector (PMI) in the FAA's London, United Kingdom, office to inspect their aircraft and review their records. The commenter requests the FAA clarify whether data obtained from this review would be acceptable to the FAA when transferring an aircraft to the U.S. registry.

FAA Response: The FAA does not believe it is necessary to include specific language in the rule allowing the use of ODARs to perform inspections and records review. Each operator may decide, based on individual need, whether they will use designees or have the FAA perform the airplane inspections and records review this rule requires. The final rule does not mandate the use of DARs or ODARs. The Administrator already has the authority under § 183.33 (Designated Airworthiness Representative) to designate certain persons or organizations to perform these functions.

To aid the inspections by existing DARs, the FAA has updated the guidance material in FAA Order 8100.8B, Designee Management Handbook, and is providing workshops for its designees. The intent is to maximize the number of DARs available to conduct the inspections and records reviews. The FAA remains committed to the timely issuance of designee authorizations to properly qualified persons.

The comment about whether ''data'' obtained during airplane inspections and records review would be acceptable when transferring an aircraft to the U.S. registry is unclear. For part 129 operators, this final rule only applies to U.S.-registered airplanes. If the commenter transfers a non-U.S.-registered airplane to the U.S. registry, the airplane would have to meet all FAA operational and certification requirements on transfer, including the requirements of this final rule.

Comment: One commenter, who expresses concern for air safety, agrees the rule is needed and asks who would conduct the airplane inspections.

FAA Response: The FAA's airworthiness inspectors and designees will conduct the airplane inspections and records reviews required by this rule.

Comment: Two commenters discuss examining wire during airplane inspections and records reviews. One commenter says wiring is often overlooked in the inspection process. A second commenter says it is necessary to determine a timetable for wire and cable bundles to be inspected and replaced.

FAA Response: Congress passed the Aging Aircraft Safety Act of 1991 to address aging aircraft structural concerns resulting from the April 1988 accident involving a B–737. The Aging Airplane Safety rule, which resulted from the Act, addresses only structural concerns. The FAA is evaluating future rulemaking actions that may address other airplane systems such as wiring.

Comment: Some commenters say the rule is unnecessary. Several commenters believe the rule does not provide added safety benefits. One commenter says the FAA can achieve the same results without rulemaking by simply adding increased inspections to C and D checks. One commenter says the IFR duplicates existing regulations, is unevenly applied, and is inconvenient.

FAA Response: The Aging Aircraft Safety Act (AASA) of 1991, as codified in Section 44717 of Title 49 U.S.C., directs the Administrator to ''make inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation.'' The FAA issued this rule to comply with this statutory mandate. The rule helps ensure the continued structural airworthiness of airplanes that operate beyond their original design service goals. The inspection and records review requirements in this rule are not intended to increase the number of inspections the operator performs. The FAA will perform the airplane inspections and records reviews required by this rule during scheduled maintenance.

Comment: Some commenters express concern the term ''highest degree of safety'' is vague and is open to interpretation. One commenter says while this term appears in the Federal Aviation Act of 1958, it has never appeared in a rule until now. The commenter believes the FAA should interpret the Act rather than simply repeat the phrase in the rule.

FAA Response: The FAA's use of the term, ''highest degree of safety,'' in the Aging Airplane Safety rule is based on the statutory language contained in the AASA of 1991, subsequently codified as section 44717 of title 49 U.S.C. For purposes of this rule, the FAA considers that operators will have met the ''highest degree of safety'' by complying with their FAA-approved maintenance program.

The maintenance programs for those airplanes affected by the inspections and records review requirement of this rule may include certain elements of the FAA's Aging Airplane Program listed below:

• Supplemental Structural Inspection Programs.
• Corrosion Prevention and Control Programs.
• Structural Modification Programs.
• Repair Assessment Programs.
• Inspections and procedures identified in the Airworthiness Limitation section of the Instructions for Continued Airworthiness.
• Damage-tolerance-based inspections and procedures required by §§ 121.370a and 129.16 of this rule.

The first five elements have been incorporated into most large transport category airplane maintenance programs. There are some airplanes subject to the inspections and records reviews requirement that do not include some of these elements. Maintenance programs that include any of these elements will be subject to the airplane inspections and records review provisions of this rule.

According to the IFR, operators of certain model airplanes are not required to incorporate damage-tolerance-based inspections and procedures in their maintenance programs until December 5, 2007. This final rule extends this compliance date to December 20, 2010. As a result, damage-tolerance-based inspections and procedures, as required by §§ 121.370a and 129.16, are not required to be incorporated into maintenance programs before this date.

As explained later in this preamble under ''Changes to the Interim Final Rule'' heading, the FAA has removed the DT requirements for certain airplanes operated under parts 121, 129, and 135. However, the airplane inspections and records review requirement still applies to these airplanes.

Comment: One commenter states the requirements for the extent of inspections and records reviews are not clearly defined, which may lead to inconsistent interpretation and application.

FAA Response: The FAA intends to perform structural spot inspections of each airplane and review those records needed to determine compliance with §§ 121.368(d), 129.33(c), 135.422(d) of this final rule. The FAA has provided the following guidance to aid compliance with the airplane inspections and records reviews requirements in the rule:

- Notice 8300.113, Conducting Records Reviews and Aircraft Inspections Mandated by the Aging Aircraft Rules, dated November 25, 2003, which has been incorporated into FAA Order 8300.10, Airworthiness Inspector's Handbook. This guidance includes information on scheduling inspections and records review to minimize the impact on operators' maintenance schedules.
- Advisory Circular (AC 120–84) Aging Airplane Inspections and Records Reviews, provides guidance for operators to comply with the requirements of this rule.

The FAA believes providing guidance for our inspectors and for the industry will help reduce inconsistencies in interpreting and complying with the rule.

Comment: A commenter recommends the records review of ADs and modifications on structures that are not easily ''de-modified,'' such as Boeing 747 section 41, be waived after the first inspection. For repetitive inspections, the commenter suggests the review be required only on the records collected since the last inspection.

FAA Response: Under the airplane inspections and records review requirements, the FAA does not intend to inspect an airplane such that an operator would have to ''de-modify'' the structure to gain access to certain areas. These areas include ones modified by AD, supplemental type certificate (STC), FAA approved service bulletin, or FAA approved repair. However, if in complying with §§ 121.370a and 129.16 deficiencies are identified in a repair, alteration, or modification, or in the inspection procedures, removal of a previously modified structure may be required.

Comment: A commenter says the FAA's Flight Standards office has for many years conducted thorough records reviews and on-site spot inspections of airplanes during heavy maintenance visits. The commenter wants the FAA to allow credit for these prior records reviews and inspections either in the regulation or in the guidance material. The commenter says a certificate holder's PMI could be responsible for determining the extent of credit to give on a particular airplane.

FAA Response: Operators must provide the FAA with the current inspection status of the airplane as required by §§ 121.368(d), 129.33(c), and 135.422(d). To meet the requirement of these sections, the FAA intends to conduct the specified inspections and records review during scheduled maintenance visits. The FAA also intends to perform structural spot inspections of each airplane and review those records necessary to determine compliance with this rule. The FAA will consider the scope and timeframe of prior inspections to determine the extent to which those prior inspections can help the operator meet the inspections and records reviews mandated by this rule.

Comment: One commenter believes the requirement for a fixed repeat inspection interval not to exceed 7 years required by § 121.368(b) should be removed. Further, any subsequent inspection requirements should be met based on an agreement between the operator and the PMI. This would allow the operator and the PMI to agree on the schedule for follow-up inspections. The commenter says this is particularly true for those fleet types where the FAA-approved maintenance programs are segmented. Such programs do not provide for 14-day downtimes or only provide for 14-day downtimes at intervals beyond 7 years. Thus, the commenter recommends the following wording at the end of subparagraphs (1), (2), and (3) of § 121.368(b): ''* * * and thereafter at intervals approved by the FAA principal maintenance inspector (PMI) having cognizance for the operator.''

FAA Response: The FAA selected a 7-year interval for repeat inspections to provide time for operators to schedule the inspections and records review. Such scheduling would take place during a ''C'' check or segment thereof, ''D'' check or segment thereof, or other scheduled maintenance visits where structural inspections are done. The FAA believes a 7-year repeat interval provides scheduling flexibility for the operator to meet the requirements of the rule. Also, §§ 121.368(c), 129.33(b), and 135.422(c) of the rule authorize the Administrator to approve up to a 90-day extension beyond the 7-year interval required by §§ 121.368(b), 129.33(a), and 135.422(b). The FAA's PMI may approve this extension for the Administrator. The FAA agrees the operator and PMI should work together to agree on the specific time within the 7-year repeat intervals to conduct the required inspections and records review.

Comment: Several commenters express concern about the inspection intervals. One commenter states the repeat interval for inspections will result in maintenance program scheduling constraints. The commenter says meeting the 7-year requirement in the rule would result in 118 added heavy maintenance visits (HMV) because their HMVs on B–737 and B–767s are scheduled at 8-year intervals. In general, the commenter believes the timeframes for inspections and records reviews in the rule are out of sync with their particular maintenance program requirements. Another commenter states that certificate holders and FAA inspectors should work together to schedule the required inspections to coincide with existing inspection schedules. The commenter adds the FAA should quickly publish guidance that removes any doubt about the effect of the rule on heavy maintenance check (HMC) schedules.

FAA Response: The AASA states the records reviews and inspections will be carried out as part of the operator's HMC. To comply with the statute, the FAA considers an HMV or HMC to consist of a ''C'' check or segment thereof, a ''D'' check or segment thereof, or other scheduled maintenance where structural inspections are accomplished. The FAA agrees the required inspections and records review should coincide as much as possible with operators' existing maintenance schedules. The FAA does not believe the rule will result in added HMVs or HMCs since the FAA intends to coordinate the airplane inspections and records reviews to coincide with scheduled HMVs and HMCs. To provide guidance for the conduct of the inspections and records reviews, the FAA published Notice 8300.113 and AC 120–84, discussed earlier in this preamble.

Comments: A commenter suggests the FAA reduce the inspection intervals from 14 years to 8 years and conduct periodic spot checks of 20 percent of the airplanes during the inspection intervals.

FAA Response: The statute requires inspections and records reviews of each airplane to ''be carried out as part of each HMC of the aircraft conducted after the 14th year in which the aircraft has been in service.'' To meet this requirement, the FAA must inspect each airplane. However, the FAA intends to conduct a spot inspection of each airplane. The FAA established the first and repeat intervals at which inspections and records reviews will be done. The FAA set the first inspections based on the age of the airplane with the oldest airplanes being scheduled first. The repeat intervals for all airplanes, regardless of age, is set at 7 years, following completion of the first inspection.

Comment: One commenter believes § 121.368(d) should request a listing of operational limits as part of the airplane records. This commenter also says aging aircraft rules require full compliance with their terms on transfer of an aircraft. Therefore, a statement about full compliance on transfer should be included in the rule.

FAA Response: The FAA does not require a listing of ''operational limits'' as part of the airplane records required in § 121.368. However, the FAA does require that operators make available records that contain the current status of life-limited parts of the airframe.

The FAA has not included a requirement that an operator provide a statement that an airplane complies with the provisions of this rule at the time of transfer. Operators show compliance with the airplane and records availability requirements of the rule by making affected airplanes that meet the stated time in service and their associated records available to the Administrator within the prescribed interval. If the commenter transfers an airplane from a foreign country to the U.S. registry, the airplane will have to meet all FAA operational and certification requirements on transfer, including the requirements of this final rule.

Comments: Several commenters state § 121.368 duplicates current regulations, especially the provisions of § 121.380, which also relate to recordkeeping requirements. In support of their comments, they say most operators of large transport category airplanes have developed elaborate maintenance recordkeeping systems under § 121.380. They say these systems duplicate the requirements under § 121.368. They recommend the FAA revise the language in § 121.368(d) that states ''* * * together with records containing the following information'' to read ''* * * together with the following records or those specified in § 121.380.''

One commenter contends the FAA should modify the rule or add in the advisory circulars a statement saying compliance with § 121.380 is an alternate way to comply with § 121.368. This same commenter states § 121.380 is more comprehensive than § 121.368, especially about airworthiness directives. Existing § 121.380(a)(2)(vi) requires records to include ''* * * the current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.'' However, for Airworthiness Directives, § 121.368(d)(8)(i) requires ''current status of the following, including the method of compliance.''

FAA Response: The FAA agrees that some of the recordkeeping requirements of § 121.368(d) are also found in § 121.380. However, § 121.368(d) contains added recordkeeping requirements not found in § 121.380. These added requirements allow the FAA to determine compliance with the Aging Airplane Safety rule. For example, § 121.368(d) requires records containing information on total years in service of the airplane and total flight cycles of the airframe. Because § 121.368(d) contains requirements not contained in § 121.380, compliance with § 121.380 by itself cannot constitute compliance with § 121.368(d). Operators can show compliance to both §§ 121.368(d) and 121.380 within a single recordkeeping system that is acceptable to the FAA. This removes the need to repeat recordkeeping for those requirements found in § 121.368(d) and § 121.380. The FAA included guidance in advisory circular AC 120–84, Aging Airplane Inspections and Records Reviews, to address the records requirements. The FAA also has included guidance in Notice 8300.113, Conducting Records Reviews and Aircraft Inspections Mandated by the Aging Aircraft Rules, which has recently been incorporated into FAA Order 8300.10 to address these requirements.

The FAA agrees that compliance with § 121.380(a)(2)(vi) should satisfy the recordkeeping requirements contained in § 121.368(d)(8). Therefore, we have revised § 121.368(d)(8) to match the requirements in § 121.380(a)(2)(vi).

Comments: A commenter says the provisions of § 119.59 already provide adequate authority to carry out aircraft inspections and records reviews required by § 121.368.

FAA Response: The FAA agrees. Section 119.59(a) states ''at any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with Title 49 of the United States Code, applicable regulations, the certificate, or certificate holder's operations specifications.'' The Aging Aircraft Safety Act, however, requires the Administrator to conduct specific inspections that before the Act were part of the FAA's discretionary oversight.

Comments: One commenter notes some major repairs have no repetitive inspections associated with them and recommends the FAA amend § 121.368(d)(10) to read: ''A report of major repairs which require supplemental inspections, and the inspection status of those repairs.''

FAA Response: The FAA disagrees. Knowing the inspection status of all major repairs, including those repairs that have no damage-tolerance-based repetitive inspection requirement, is an important part of maintaining the continued airworthiness of aging airplanes. The inspection and records review required by § 121.368(d)(10) will help ensure major repairs and changes to major repairs are properly recorded and their inspection status verified. There are past instances where modification of major repairs degraded the airplane's structural integrity to the point of making it no longer airworthy. In some cases, it was determined the current inspections were not adequate to address the modifications. In other cases, where no inspections were required for the original modification, it was determined that repetitive inspections were necessary to ensure the airworthiness of the modified repair. Therefore, the value of the inspection and records review required by § 121.368(d)(10) is to verify the condition of all major repairs and identify areas where more inspections may be required.

Advisory Material and Training for Aging Airplane Inspections and Records Reviews

Comment: Several commenters express concern about whether enough training, guidance material, and trained inspectors would be available to support compliance with the rule. One commenter suggests if guidance materials and trained inspectors are not ready by December 8, 2003, the compliance date specified in § 121.368, the FAA should index the 48-month inspection and records review completion window based on the availability of trained inspectors. One commenter requests the FAA open DAR and PMI training programs to non-U.S. operators. Another commenter asks the FAA to extend this compliance date to the date the FAA completes training for FAA inspectors and DARs, unless the guidance material is issued with the final rule. One commenter says it is especially important to provide training and guidance material to operators during the initial period of compliance with this rule.

FAA Response: The FAA agrees that timeliness of training is important to meeting the deadlines in the rule. Therefore, the FAA completed workshops for its flight standards airworthiness inspectors and is providing workshops for its designees (DARs and ODARs). The intent of these workshops is to ensure that FAA airworthiness inspectors, DARs, and ODARs use uniform procedures when conducting their inspections and records reviews. A foreign air carrier may hire an FAA designee to perform the airplane inspections and records review required by the Aging Airplane Safety rule. The FAA does not intend to develop a training course specifically for air carriers. However, the FAA has developed an AC 120–84, Aging Airplane Inspections and Records Reviews, to help operators affected by the Aging Airplane Safety rule.

Additionally, the FAA published guidance in Notice 8300.113, Conducting Records Reviews and Aircraft Inspections Mandated by the Aging Aircraft Rules. The FAA's training preparations and published guidance allowed the FAA to begin inspections and records reviews shortly after the effective date of the IFR.

The FAA is adopting an approach that enables the existing FAA inspector workforce to comply with their obligations under this rule. The approach involves the use of spot inspections and records reviews and coordinating with operators to perform these inspections and reviews during scheduled maintenance.

Comment: A commenter requests clarification on the applicability of Handbook 8300.10, volume 3, chapter 2, to on-site inspections.

FAA Response: The FAA has reviewed volume 3, chapter 2 of FAA Order 8300.10, Airworthiness Inspector's Handbook, which discusses the conduct of structural spot inspections of an operator's aircraft, to determine the applicability of that chapter to the airplane inspections and records review requirements. The FAA found that this Order did not provide enough guidance to conduct inspections and record reviews required under the rule. Therefore, the FAA issued Notice 8300.113 on November 25, 2003, to provide added guidance to inspectors to conduct these inspections and records reviews.

Comment: Several commenters discuss draft AC 120–84, which was released concurrently with the IFR. In general, the commenters express concern that the AC provides no added guidance to operators. The commenters feel that operators are inadequately prepared for the inspections and reviews required under the IFR.

FAA Response: Based on comments received, the FAA has revised AC 120–84, Aging Airplane Inspections and Records Reviews, to be consistent with the final rule. The FAA has provided more guidance in the AC on conducting airplane inspections and records reviews. In addition, the FAA has changed Order 8300.10, Airworthiness Inspector's Handbook, to provide standardized guidance to FAA inspectors when conducting airplane inspections and records reviews.

Comment: A commenter requests the FAA clarify whether AC 120–84 is intended to address structural issues only.

FAA Response: AC 120–84 applies to airplane structures only.

Comment: A commenter notes that AC 120–84 contains an inaccurate reference to § 121.212, which does not exist.

FAA Response: The FAA agrees with the commenter and has made the correction in the final version of AC 120–84.

Supplemental Inspections

To aid understanding of the discussion about repairs, alterations, and modifications (RAMs), which appears below, the FAA offers the following explanation: The industry has used the terms ''alteration'' or ''modification'' synonymously to define a design change to an airplane. Therefore, the FAA uses both terms to avoid potential misinterpretation of the intent of these terms.

Comment: A commenter suggests the FAA withdraw the supplemental inspection requirement and task the ARAC to provide advice in this area. Another commenter suggests the FAA extend the compliance date to 2010 since the FAA issued the notice of proposed rulemaking in 1999.

FAA Response: The FAA determined that it is no longer necessary to impose the DT requirements of this rule on the number of airplanes mandated in the IFR. Therefore, this final rule only imposes DT requirements on airplanes that are—

- Transport category;
- Turbine powered;
- Have a type certificate issued after January 1, 1958; and
- Have, because of original type certification or later increase in capacity, a maximum type-certificated passenger seating capacity of 30 or more or a maximum payload capacity of 7500 pounds or more.

The FAA determined that damage-tolerance-based inspections and procedures are an effective way to meet the AASA's requirement for preserving the continued airworthiness of an airplane's structure. AC–25.571–1C, Damage Tolerance and Fatigue Evaluation of Structure, which the ARAC helped develop, is an acceptable means of compliance with the DT-based supplemental inspection requirements for the baseline structure (type design) of an airplane. The FAA tasked the ARAC on May 13, 2004, to develop guidelines to support the industry's compliance with the rule's requirements to address repairs, alterations, and modifications. Further, the FAA has extended the compliance date for operators to have damage-tolerance-based inspections and procedures in their airplane maintenance programs from December 5, 2007, to December 20, 2010. This extension should allow enough time for the ARAC to perform the tasking and for operators to comply with the supplemental inspection requirements of the final rule.

Comment: A commenter asks whether the FAA would extend the December 20, 2010, compliance date for those parts of the IFR that already contain this compliance date.

FAA Response: The FAA has removed from the rule the supplemental inspection requirements related to design-life goal airplanes, airworthiness directive-mandated service-history-based inspections, and multiengine airplanes with nine or fewer passenger seats. These requirements had a compliance date of December 20, 2010. However, as noted earlier, the FAA has removed all part 135 supplemental inspection requirements from this rule. Also, the FAA has extended the compliance date for the remaining supplemental inspection requirements under parts 121 and 129 from December 5, 2007, to December 20, 2010.

Comment: One commenter states for aircraft transferring from country to country, it is not clear how the life limits (design-life goal) would be interpreted.

FAA Response: As noted earlier, the FAA has removed the design life goal requirement from the rule.

Comment: One commenter states the FAA has not proven that a DT inspection program is any more effective than the current programs operators use for their small airplane fleets. The commenter suggests the FAA use another method for 10- to 19-seat, nontransport-category airplanes.

FAA Response: Based on industry comments and the FAA's reassessment of the IFR and the Aging Airplane Program, the FAA narrowed the scope of airplane applicability in §§ 121.370a and 129.16 to impose DT requirements on transport category, turbine powered airplanes with a type certificate issued after January 1, 1958, that as a result of original type certification or later increase in capacity, have—

- A maximum type-certificated passenger seating capacity of 30 or more; or
- A maximum payload capacity of 7,500 pounds or more.

As a result, the final rule does not apply to the airplanes the commenter references.

Comment: A commenter notes that currently DT and safe-life inspections are acceptable to show compliance with maintenance requirements. However, it appears that under the IFR, the FAA will only accept DT-based maintenance programs after December 2007. The commenter suggests the IFR clearly state that parts certified as safe-life are exempt from the requirements of § 121.370a. Another commenter notes that several aircraft, such as the EMB–110, were designed using safe-life criteria, which were required at the time of certification. The commenter states that aircraft not designed using DT techniques will not have accessibility to all areas that must be inspected under a Damage Tolerance Inspection Program (DTIP). The commenter suggests that forcing DT inspections could result in unintended damage to the structural integrity of the aircraft.

FAA Response: The intent of the Aging Airplane Safety rule is to apply the DT and fatigue evaluation of structure consistent with the evaluation prescribed in § 25.571. Section 25.571(c) includes provisions for the evaluation of safe-life structures when the applicant determines the DT requirements of § 25.571(b) are impractical for a particular structure. For purposes of this rule, damage-tolerance-based inspections and procedures will not be required for an airplane component certified as a safe-life design (*e.g.*, landing gear) and where the application of the DT requirements of § 25.571(b) are determined to be impractical.

Comment: Several commenters ask the FAA to clarify the extent to which a DT assessment for repairs, alterations, and modifications (RAMs) beyond the fuselage pressure boundary will be required. One of the commenters says the industry held 29 meetings over 7 years to develop a process and procedure to assess existing repairs. They found that a rational, technical basis is needed only to assess the DT of fuselage pressure boundary repairs. Also, the commenter states while the IFR indicates damage-tolerance-based maintenance programs must be in place by December 2007, the IFR does not say what this means. The commenter recommends two options regarding § 121.370a. In option 1, the commenter states the FAA should withdraw § 121.370a and the associated draft AC 91–56B (regarding airplanes >75,000 lbs maximum takeoff weight (MTOW)). Additionally, the commenter requests that the FAA task the Aviation Rulemaking Advisory Committee (ARAC) with formulating the technical considerations and the rule and advisory language for developing a damage tolerance-based maintenance program for the primary structure of the airplane. In option 2, the commenter notes the FAA should remove the DT assessment of primary structural elements (PSEs) for RAMs discussion from the preamble to the IFR and the associated draft AC 91–56B, when re-published, and task ARAC to develop appropriate direction for the FAA.

One commenter also notes that significant gaps appear in the DT guidance materials original equipment manufacturers (OEM) provide for DT-based inspections and procedures.

Another commenter states the rule, with respect to RAMs made to non-ATA 53 (fuselage structure) PSEs, should not apply to aircraft certificated before amendment 25–45. The commenter further states that they are unaware of any fleet evidence of DT problems associated with a repair to non-ATA 53 PSEs. The commenter supports the ARAC's Airworthiness Assurance Working Group's (AAWG) earlier recommendation on repair assessment that the scope of addressing repairs for DT on pre-amendment 25–45 aircraft should be confined to those repairs made only to the fuselage pressure boundary.

FAA Response: In 1992, the FAA and the AAWG surveyed large transport category airplane models to assess the status of repairs. In 1994, the AAWG requested manufacturers conduct a second survey on airplane repairs to validate the 1992 results. The surveys showed that the fuselage pressure boundary was the area most susceptible to structural damage and subsequent repairs. Therefore, in response to the AAWG's recommendations, the FAA issued the ''Repair Assessment for Pressurized Fuselages'' final rule (65 FR 24108, April 25, 2000).

In the preamble language to that rule, the FAA recognized, based on the AAWG's recommendations, that additional rulemaking may be needed to address repairs on the remaining primary structures. In addition, the preamble under the heading ''Determining which Airplanes Should be Affected,'' states:

> Those transport category airplanes that have been certificated to regulatory standards that include the requirements for damage-tolerance structure under § 25.571 are not included in this rulemaking action. These later requirements make it incumbent on the operating certificate holder to return the structure to the original certification basis by installing only those repairs that meet the airplane's damage-tolerance certification basis. The AAWG, in its final report on this subject, did recommend continued monitoring of repairs on newer airplanes, with the possibility of additional rulemaking if conditions warrant * * * It was from this activity that the AAWG and the manufacturers recognized not only the need for a RAG document for each affected model, but a SRM updated to include the results of a damage-tolerance assessment.

As transport category airplanes continue to accumulate flight hours, they are increasingly susceptible to fatigue cracking and repairs. The FAA has determined that there is no technical basis for excluding any repaired airplane structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. Therefore, the FAA believes that repairs made to such structure that is outside the pressure boundary must be addressed as part of this final rule.

In an effort to support industry's compliance with the Aging Airplane Safety final rule, the FAA tasked ARAC (69 FR 26641, May 13, 2004) to make recommendations regarding the assessment of repairs beyond the fuselage pressure boundary. We tasked ARAC to complete their work by December 18, 2009. In addition, the FAA recognizes that additional time is needed to implement the ARAC recommendations, which are related to guidelines for establishing DT-based inspections and procedures for RAMs, and for operators to incorporate DT-based inspections and procedures for RAMs into their maintenance programs. Therefore, the FAA has extended the DT-based supplemental inspection requirement compliance time in this final rule to December 20, 2010.

Comment: A commenter requests clarification on whether the FAA would accept a SSID program developed by the OEM as an alternate means of compliance with the supplemental inspection requirements.

FAA Response: The FAA will accept a SSID program for the baseline structure of an airplane developed by the OEM and approved by the FAA. If a SSID does not consider repairs, alterations, and modifications (RAMs), as required by this rule, the FAA would not accept it as a means to comply with this portion of the rule.

Comment: One commenter notes that the IFR will apply to pre- and post-amendment 25–45 airplanes; however, the accompanying guidance materials do not provide guidance for post-amendment 25–45 airplanes. Another commenter says the FAA should apply the December 2007 compliance date only to DTIPs for those areas where guidance materials have been developed.

FAA Response: The FAA believes adequate guidance exists for developing DT-based supplemental structural inspections for post-amendment 25–45 airplanes. The FAA recognizes that the guidance material for developing DT-based supplemental inspection programs that address repairs, alterations, and modifications may be inadequate to support compliance with this rule. Therefore, the FAA has tasked the ARAC to draft an advisory circular that contains guidance to support operators' compliance with §§ 121.370a and 129.16 for all affected airplanes. This guidance will support compliance with the final rule for the DT-assessment of repairs, alterations, and modifications made to aircraft structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure.

The FAA also has decided to extend the compliance date for the DT-based supplemental inspection requirement from December 5, 2007 to December 20, 2010. This will allow the ARAC enough time to develop the guidance material and will give the operators enough time to incorporate the DT requirements into their maintenance programs.

Comment: One commenter states that because ''DTIP'' is not concisely defined, the FAA should include a definition of this term in 14 CFR part 1. A second commenter expresses concern over the FAA's failure to clearly define ''DTIP.''

FAA Response: The term ''damage-tolerance-based inspections and procedures'' or DTIP as used in this rule refers to the actions needed to achieve damage tolerance as defined in AC 25.571–1C, Damage Tolerance and Fatigue Evaluation of Structure.

Comment: Several commenters express concern that operators will not be able to comply with the supplemental inspection requirements in the rule without data from the OEM. One commenter notes the IFR does not require OEMs to provide these data. This commenter suggests the FAA Transport Airplane Directorate standardize SSID ADs to aid industry compliance with DT-based inspections. Another commenter states they would not be able to comply with the rule because the manufacturer has not issued FAA-approved SSIDs for their airplane fleets.

FAA Response: The FAA is considering proposing a new rule to require type certificate and supplemental type certificate holders to develop damage tolerance inspection programs that will support compliance with the Aging Airplane Safety final rule. The FAA recognizes the need to standardize SSID ADs to aid industry's compliance with DT-based inspections and procedures.

Comment: One commenter notes that although the FAA has acknowledged difficulty in implementing ADs for structural repair manuals, the FAA does not present a solution to this problem in the IFR.

FAA Response: It is not the FAA's intent to mandate structural repair manuals by issuing ADs. While the commenter's specific concern is unclear, the FAA notes that we issue ADs to address known unsafe conditions on aircraft. OEM produced structural repair manuals are a part of the Instructions for Continued Airworthiness, and are used in carrying out operators' maintenance programs.

Comment: A number of commenters express concern about the design-life goals contained in Appendix N to part 121, Appendix B to part 129, and Appendix G to part 135 of the IFR. The commenters say the FAA may have used inconsistent approaches for determining design-life goals and evaluating specific aircraft types.

FAA Response: The FAA acknowledges the concerns the commenters express. The FAA has removed the design-life goal requirements, which include part 121 Appendix N, part 129 Appendix B, and part 135 Appendix G, from the regulation. The design-life goals were intended as a transition measure for those models listed in the appendices. The IFR required inspection programs to be in place by December 5, 2007 for airplanes above their design-life goals. For those airplanes that had not reached their design-life goal, inspection programs were not required until December 20, 2010. Since the compliance date for the damage tolerance requirements has been extended to December 20, 2010, this transition period is no longer needed. Additionally, only three of the models listed in the appendices meet the new airplane applicability requirement of this final rule, and these three models are no longer operated under part 121.

Comment: One commenter states that under existing ADs and repair assessment guidelines for pressurized fuselages, the required repair assessments are linked to the number of flight cycles as a percentage of the design-life goal. The commenter recommends that for airplanes that have more than 14 years in service but relatively few flight cycles, the FAA should not require DT assessment of all repairs during the initial aging aircraft inspections.

FAA Response: The FAA recognizes that current repair assessment guidelines for pressurized fuselages required by § 121.370 are linked to the number of flight cycles as a percentage of the design-life goal. The FAA has tasked ARAC to develop guidelines that would support the industry's compliance with § 121.370a for repairs, alterations, and modifications made to the baseline primary structure. The FAA expects the new repair assessment guidelines will be consistent with those developed for § 121.370. Also, the FAA has extended the compliance date for damage-tolerance-based inspections and procedures to December 20, 2010. This will give the ARAC enough time to complete its work.

Comment: One commenter recommends the term ''primary structure'' be replaced with the term ''Principle Structural Elements.''

FAA Response: The FAA disagrees the term ''primary structure'' should be replaced with the term ''Principle Structural Elements.'' This is mainly because of the different industry interpretations for the term ''Principle Structural Elements.'' However, the FAA believes it would be helpful to clarify the intent of this rule regarding the type of primary structure that requires damage-tolerance-based inspections and procedures. Therefore, the FAA provided this clarification in §§ 121.370a and 129.16 of this rule. The revised language applies to ''airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure.''

Advisory Material for Supplemental Inspections

Comment: Many commenters address the need for the FAA to provide more guidance material to assist operators in complying with the required DT-based inspections and procedures.

FAA Response: Guidance material is available in AC 25.571C for developing DT-based inspections for an airplane's baseline primary structure. As noted earlier, the FAA has tasked the ARAC to develop guidance material the operators can use to support their compliance with §§ 121.370a and 129.16 of this rule with respect to addressing repairs, alterations, and modifications.

Comment: One commenter says draft AC 91–56, Continued Structural Integrity Program for Airplanes, states that widespread fatigue damage (WFD) will be the subject of a separate rulemaking. However, little detail is given about how service bulletin reviews and aging aircraft programs should be carried out. The commenter recommends the FAA include in AC 91–56 the text the European Aging Aircraft Working Group (EAAWG) presented to cover these points. Another commenter questions whether the statement ''cracks must be difficult to detect during regular maintenance'' shows that WFD should be evaluated. If so, the commenter suggests the FAA clarify in the AC the effects of such an evaluation in extending design-life goals.

FAA Response: This rule does not include requirements for evaluating WFD. However, the FAA is considering future rulemaking that would address this topic. As a part of their tasking, the ARAC will review and make recommendations to the FAA on AC 91–56. Since the EAAWG is represented on the ARAC working group that is conducting the review, the FAA expects the views of the EAAWG would be considered.

Comment: A commenter suggests the FAA include a sample DT-assessment report in AC 91–56.

FAA Response: The commenter does not indicate how a DT-assessment report would be used and does not provide enough information about the scope of such a report. Without this information, the FAA is unable to consider including a sample report in AC–91–56.

Comment: One commenter questions whether the FAA will assign extended design-life goals to aircraft with SSIDs.

FAA Response: The FAA has removed the design-life goal requirements from the final rule. Therefore, aircraft with SSIDs will not be subject to design-life goal requirements.

Comment: A commenter recommends the FAA include in the AC not only those RAMs produced by type certificate (TC) holders, but also RAMs produced by non-TC holders through alternate means.

FAA Response: The FAA has tasked the ARAC to assess the effectiveness of AC–91–56B to provide guidance to supplemental type certificate (STC) holders for developing damage-tolerance-based inspections and procedures for repairs, alterations, and modifications made to airplane structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. The ARAC will provide recommendations regarding the development of guidance for addressing RAMs.

Comment: A commenter notes that AC 91–60, The Continued Airworthiness of Older Airplanes, is being used to guide operators in scheduled operations. The commenter recommends the FAA edit the list of components in AC 91–60 to consider them for inclusion in inspection programs and express them in more general terms.

FAA Response: AC 91–60 addresses service-history-based inspections, which are typically applied to airplanes operated under part 135. As mentioned in the FAA's response to prior comments, the FAA has changed the airplane applicability in this final rule. Because of this change, the requirement in § 135.168 related to service-history-based inspections and procedures has been removed from the rule. However, the FAA intends to issue a revised version of the related AC, AC 91–60, Continued Airworthiness of Older Airplanes, as guidance for part 135 operators, who may still want to develop service-history-based inspections.

Comment: A commenter notes the preamble to the IFR states that certain DT-based supplemental structural inspection programs (SSIPs) do not fully meet the requirements of the IFR, which apply to the complete primary structure. The commenter suggests the final rule or its accompanying ACs state that inspections and procedures in the Airworthiness Limitation section of the Instructions for Continued Airworthiness and the supplemental structural inspection document (SSID) satisfy the IFR for baseline structure.

FAA Response: With respect to an airplane's baseline structure, FAA-approved DT-based supplemental structural inspection programs that address airplane baseline structure susceptible to fatigue cracking that could contribute to a catastrophic failure are considered an acceptable means of compliance with this rule. With respect to repaired, altered, or modified baseline structure, the FAA has tasked ARAC to develop guidelines that would support the industry's compliance with §§ 121.370a and 129.16 of the rule.

Comment: A commenter requests the FAA address how operators should communicate to the FAA that a Designated Engineering Representative (DER) approved repair is DT-based, when DT requirements were not part of the original certification requirements.

FAA Response: Operators inform the FAA that a DER approved repair is DT based by establishing DT-based inspections according to the requirements of § 25.571 at amendment 25–45 or later.

Economic or Cost Comments

Comment: One commenter states that operators of aircraft with 19 or fewer seats will pay the greatest cost, on a seat-by-seat basis, for complying with the IFR. The commenter notes that unlike the aircraft involved in the Aloha Airlines, Inc. accident, aircraft with 19 or fewer seats are unpressurized. The commenter requests the FAA provide an alternative to the DT maintenance program for non-transport category airplanes with 19 or fewer seats operated under part 121.

Another commenter states the IFR will impose an enormous burden on turboprop aircraft operators, many of which will not be able to afford to support a DTIP. There are, for example, a relatively small number of EMB–110s being used in scheduled passenger operations, meaning that the very large development costs for a DTIP would be distributed over a few operators. The commenter suggests this will result in the premature retirement by 2007 of a significant number of aircraft still within their safe-life design-service goal.

FAA Response: In consideration of comments to the IFR and the FAA's review of the Aging Airplane Program, the FAA has narrowed the scope of the airplane applicability in §§ 121.370a and 129.16. The new applicability for DT inspections and procedures covers airplanes that meet all the following requirements:

• Transport category.
• Turbine powered.
• Type certificate issued after January 1, 1958.
• As a result of original type certification or later increase in capacity, have a maximum type-certificated passenger seating capacity of 30 or more, or a maximum payload capacity of 7500 pounds or more.

Comment: Several commenters state the IFR will cause them an undue burden. One commenter states the financial impact of the IFR will far exceed the FAA's estimates because these estimates have grown since 1999, the year the NPRM was-issued. Another commenter says it conducted a survey of its members to estimate the compliance costs of the IFR. Based on its cost estimates for inspections, airplane and records availability, and establishing DT programs, this commenter estimates the cost of the IFR on the industry over the next 20 years will be between $1.3 billion and $2.7 billion. Another commenter notes the IFR will cost them an additional $363 million per year in rescheduling and $285,790,000 in lost revenue.

FAA Response: Following industry comments about the IFR cost estimates, the FAA reassessed the Aging Airplane Safety Program, and the FAA modified the IFR's existing requirements. These changes to the existing requirements of the IFR have the economic impact of reducing costs. The FAA estimates the changes to this rule will provide substantial cost savings to operators of 10-to 29-seat airplanes. The estimated cost savings depend on the number of affected airplanes remaining in scheduled passenger carrying operations as of December 20, 2010. Cost savings will decrease as the number of affected airplanes decrease. The final rule provides cost relief and imposes no added costs.

Comment: A commenter states that it will be costly for operators to perform the required inspections and records reviews. The commenter recommends that an operator's DARs perform the inspections and records review required by the IFR because DARs are more familiar with the aircraft. The commenter suggests the FAA's role should be to evaluate the DARs rather than conduct the inspections and records reviews.

FAA Response: This rule does not restrict operators from using DARs or ODARs to perform the required airplane inspections and records reviews.

Comment: A commenter states that requiring HMCs every 7 years has a potential cost to its members of more than $500 million. The commenter suggests the FAA align the IFR with existing air carrier maintenance schedules to mitigate these costs.

FAA Response: The FAA intends to perform the required airplane inspections and records reviews within the operator's normal maintenance cycle. Therefore, the FAA will perform these inspections and records reviews at a ''C'' check or segment thereof, a ''D'' check or segment thereof, or other scheduled maintenance visits where structural inspections are accomplished.

Comment: Several commenters address how the FAA might reduce the implementation costs of the IFR. One commenter states that the best way to reduce implementation costs is to train field inspectors comprehensively and emphasize the importance of integrating the IFR's requirements into current air carrier maintenance and inspection programs.

FAA Response: The FAA agrees that having an adequately trained inspector and designee workforce is important to providing a standardized approach to conducting the required airplane inspections and records reviews. Therefore, the FAA completed workshops for its flight standards airworthiness inspectors and is providing workshops for its designees (DARs and ODARs). The intent of these workshops is to ensure that FAA airworthiness inspectors, DARs, and ODARs use uniform procedures when conducting their inspections and records reviews. The FAA also has changed related guidance material to ensure uniformity in the inspection and records review process.

Comment: One commenter, who conducts operations under part 135, states the FAA should use Government funds to subsidize, at least in part, the cost of the inspections to minimize the impact on ticket prices.

FAA Response: As discussed earlier, the FAA made many changes to the IFR, which are cost relieving, particularly to persons conducting operations under part 135. For example, the FAA has removed the supplemental inspection requirement in the IFR for part 135 operators.

Comment: A commenter suggests that lessors will require non-U.S. operators to meet the part 121 requirements and non-U.S. operators will attempt to mitigate the costs, leading to a greater proportion of aircraft being owned by operators rather than being leased. The commenter contends that this may cause operators to elect to operate aircraft manufactured outside the United States, which are less likely to have the IFR requirements imposed within the lease agreements.

FAA Response: The FAA notes that the provisions of this rule apply to any affected airplane, regardless of its State of design or State of manufacture. The FAA notes that any affected U.S.-registered airplane will be subject to the requirements of this rule whether it is purchased from a seller in a U.S. location or from a seller in a foreign location. The FAA does not believe the requirements of this rule will influence an operator to elect to lease a foreign manufactured airplane in lieu of a U.S.-manufactured airplane.

Comment: A commenter, who conducts operations in Alaska, says that current regulations already provide for adequate safety for aircraft operated under part 121 and additional regulations will have no measurable increase on safety.

FAA Response: The FAA notes the proposal would not apply to airplanes engaged in operations solely within the State of Alaska. This rule responds to a congressional mandate set forth in the Aging Aircraft Safety Act of 1991. If the airplane is operated outside the State of Alaska, it would be subject to the provisions of this rule.

International Trade

Comment: One commenter states the FAA did not consider the impact of the IFR outside the U.S. market.

FAA Response: The FAA notes that this rule only applies to U.S.-registered airplanes. The rule does not apply to non-U.S.-registered airplanes used by foreign air carriers to conduct operations under part 129.

Changes to the Interim Final Rule

After the FAA's recent review of the Aging Airplane Program and comments to the Aging Airplane Safety interim final rule (IFR), the FAA found it necessary to make changes to the IFR. The IFR became effective on December 8, 2003. A discussion of the changes to the rule follows.

Sections 121.368 and 129.33 Aging Airplane Inspections and Records Reviews

These sections describe the requirements for operators to make certain airplanes available to the Administrator for inspection and records review. They also explain the type and content of records operators must make available for review. Current §§ 121.368(d) and 129.33(c) explain the content of the records operators must make available for review. The FAA made the following changes to these sections:

- In §§ 121.368(d)(2) and 129.33(c)(2), ''total flight hours of the airframe'' has been changed to ''total time in service of the airframe.'' The FAA's use of the term ''total flight hours'' was not intended to differ from the meaning of the term ''total time in service'' as defined in 14 CFR 1.1. The FAA made this change to avoid any inconsistencies in the interpretation of this rule and to remain consistent with existing recordkeeping requirements.
- Sections 121.368(d)(8) and 129.33(c)(8) of the IFR require the current status of inspections and procedures required by §§ 121.370a and 129.16, airworthiness directives, and corrosion prevention and control programs. As pointed out earlier in this preamble, as part of the FAA's review of the Aging Airplane Program, the FAA withdrew the Corrosion Prevention and Control Program (CPCP) proposed rule (69 FR 50350, August 16, 2004). Therefore, the Aging Airplane Safety IFR is being amended to remove from §§ 121.368 and 129.33, the requirement for operators to provide the current status of CPCPs as a separate item. Instead, operators will provide this information as part of the requirement for the current inspection status of the airplane, or for those CPCPs mandated by AD, they will provide it as part of the requirement for the current status of ADs. In addition, the FAA has removed the requirement from §§ 121.368 and 129.33 for operators to provide the current status of the inspections and procedures that are required under the supplemental inspection portions of the IFR. The FAA removed this requirement because under the terms of this final rule, operators must provide this information as part of the current inspection status of the airplane. Further, a commenter to the rule pointed out that § 121.380(a)(2)(vi) should satisfy the recordkeeping requirements in § 121.368(d)(8) related to ADs. The FAA agrees and has revised §§ 121.368(d)(8) and 129.33(c)(8) to match § 121.380(a)(2)(vi).

Sections 135.422 and 135.423 Aging Airplane Inspections and Records Reviews for Multiengine Airplanes

On December 20, 1995, the FAA published the Commuter Operations and General Certification and Operation Requirements rule (60 FR 65832). Because of this rule, airplanes certificated with 10 or more passenger seats may not conduct scheduled passenger carrying operations under part 135. Therefore, airplanes engaged in these operations are now subject to the aging airplane inspections and records review requirements contained in § 121.368 of this final rule. As a result, the requirements in § 135.422 of the IFR, which addresses these airplanes, are no longer needed.

The FAA notes that § 121.368 requires operators to provide records containing total flight cycles of the airframe. The FAA recognizes that some part 135 operators may not have kept a record of the total flight cycles of the airframe. Therefore, current flight cycle information may not be available. In such an instance, the operator should determine flight cycles using a flight hour to flight cycle ratio included in their manual that is acceptable to the assigned PMI.

In this final rule, the FAA has redesignated § 135.424 as § 135.423 and has made the following changes to § 135.422:

- The reference to ''total flight hours of the airframe'' is changed in to ''total time in service.'' This change is similar to the change in §§ 121.368(d)(2) and 129.33(c)(2) described earlier.
- The requirements to provide the current status of Corrosion Prevention and Control Programs (CPCP) and the current status of supplemental inspections and procedures required by § 135.168 are removed. These changes are similar to those made in §§ 121.368 and 129.33.
- The requirement to provide the time and date of the next recurring action for an airworthiness directive was added to paragraph (d)(7). These changes are similar to those made in §§ 121.368 and 129.33. In addition, the requirements in § 135.168 have been removed from the rule.

Sections 121.370a, 129.16, and 135.168 Supplemental Inspections

Airplane applicability: This final rule narrows the airplane applicability for supplemental inspections and procedures (DT-based and service-history-based). The final rule removes requirements for service-history-based inspections and procedures and imposes damage tolerance requirements on transport category, turbine powered airplanes with a type certificate issued after January 1, 1958, that as a result of original type certification or later increase in capacity, have—

- A maximum type-certificated passenger seating capacity of 30 or more; or
- A maximum payload capacity of 7,500 pounds or more.

The FAA determined that this rule should apply to airplanes with a type certificate issued after January 1, 1958, because this date is generally accepted as the beginning of the jet age for commercial aviation in the United States. It corresponds with the type certificate applicability date used in other rules, such as the Fuel Tank Design Review (SFAR 88) rule.

The reference to the original type certificate or later increase in capacity is intended to address two situations:

1. In the past, some designers and operators have attempted to avoid the application of requirements that apply only to airplanes over specified capacities by obtaining a design change approval for a slightly lower capacity. By including the reference to ''capacity resulting from the original certification,'' the FAA intends to remove this possible means of avoiding compliance.
2. It is also possible for an airplane design to be originally certified with a capacity slightly lower than the minimum specified in this section. But, through later design changes, the capacity could be increased above this minimum. The reference to ''later increases in capacity'' is intended to ensure that, if this occurs, the design would have to meet the requirements of this section.

The FAA received comments to the IFR that expressed concern about the economic burden the supplemental inspection requirement would place on persons operating small commuter airplanes in air-carrier service. These operators typically operate small fleets of airplanes with a passenger seating capacity of 30 or less. As of 2003, the U.S. fleet total of these airplanes consisted of 19 models and about 350 airplanes. This small number of airplanes per model makes it costly for operators to develop inspection programs. The FAA found that as of 2002, only about 50 percent of the small commuter fleet in use in 1997 was still operating in the U.S. By 2010, the FAA expects this percentage to decrease to only 11 percent (about 80 aircraft) or less of the commuter fleet in use in 1997. The FAA has determined the supplemental inspections for these airplanes are no longer needed and intends to address the discovery of any age-related problems for these airplanes through continued operational safety programs and ADs.

If operators of these small airplanes choose to voluntarily develop supplemental inspection programs, they can refer to AC 91–60, The Continued Airworthiness of Older Airplanes, which the FAA is currently revising, for guidance.

Compliance date: The current regulation contains a compliance date of December 5, 2007, for operators to include damage-tolerance-based inspections and procedures in their maintenance programs. In §§ 121.370a(c) and 129.16(b) of this final rule, the FAA has extended this compliance date to December 20, 2010.

On May 13, 2004, the FAA tasked ARAC to develop guidelines to support the industry's compliance with the rule's requirement to address repairs, alterations, and modifications. Extending the compliance date to December 20, 2010, will give ARAC time to develop these guidelines. It also will allow operators enough time to comply with the requirement to incorporate damage-tolerance-based inspections and procedures into their maintenance programs.

New model added through type certificate amendment (parts 121 and 129): The FAA has determined that this requirement is no longer needed. The intent of this requirement under §§ 121.370a(b) and 129.16(c) of the IFR was to cover certain large transport category airplanes (*e.g.*, B–737s, MD–80s, and A300s) whose certification basis does not include a requirement for damage-tolerance-based inspections and procedures. Since the FAA expects that some of these airplanes may reach or exceed their design-life goals before the extended compliance date for supplemental inspections, the FAA finds it necessary to mandate supplemental inspections and procedures (*i.e.*, supplemental structural inspection documents (SSIDs)) for these airplanes by issuing ADs. Operators of airplanes that will not reach their design-life goal by December 20, 2010, must comply with the supplemental inspection requirements (§§ 121.370a(c) and 129.16(b)) of this final rule by the December 20, 2010, date.

Design-life goal airplanes (parts 121 and 129): Under §§ 121.370a(c) and 129.16(d) of the IFR, the design-life-goal requirement restricts an operator from operating an airplane with a design-life goal listed in part 121 Appendix N and part 129 Appendix B, after December 5, 2007. This requirement is no longer needed because most of these airplanes have a passenger seating capacity of less than 30 passenger seats. Also, the FAA has extended the compliance date for supplemental inspections to December 20, 2010. The FAA expects that most of these airplanes will not be in scheduled passenger service by December 20, 2010. The FAA will address any age-related problems for these remaining airplanes through continued operational safety programs and ADs.

Airworthiness directive-mandated service-history-based inspections (parts 121 and 129): This requirement under §§ 121.370a(d) and 129.16(e) of the IFR prohibits an operator from operating an airplane beyond December 20, 2010, for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. The IFR further requires that after this date, the operator's maintenance program must include DT-based inspections and procedures for these airplanes. The airplanes subject to this requirement are mostly reciprocating engine powered airplanes that have long been out of scheduled passenger service. There are about 50 of these airplanes, consisting of four models, currently serving as freighters. Some of these airplanes are operating in the State of Alaska and are excepted from the requirements in this rule. The FAA has determined that imposing damage-tolerance-based inspections and procedures on the airplanes not operating in Alaska would impose an undue economic burden with little increase in safety benefits. The withdrawal of this requirement does not relieve the operators of these airplanes from any of the requirements in applicable ADs.

Supplemental inspections (part 135): Since the FAA has narrowed the applicability for supplemental inspections to certain transport category airplanes, § 135.168 and Appendix G to part 135 have been removed from this final rule.

Airplane structure applicability: Some comments to the IFR indicated the rule is still unclear about the type of airplane structure to which the DT-based inspections and procedures should be applied. Therefore, the FAA further clarified §§ 121.370a(c)(1) and 129.16(b)(1) of this final rule to state operators must include in their maintenance programs ''FAA-approved damage-tolerance-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure. These inspections and procedures must take into account the adverse affects repairs, alterations, and modifications may have on fatigue cracking and the inspection of this airplane structure.''

Approvals (§§ 121.370a(e) and 129.16(f)): The FAA has removed these approval paragraphs and has placed the approval requirements in §§ 121.370a(c)(2) and 129.16(b)(2) of the final rule. The FAA has modified the related rule language to further clarify and identify the approval levels the rule requires. The final rule states the damage-tolerance-based inspections and procedures and any revisions to them must be approved by the Aircraft Certification Office or the office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator. The FAA intends to develop guidance material to provide a consistent approach to the approval process.

The rule also states operators must include the damage-tolerance-based inspections and procedures in their FAA-approved maintenance program.

Section 135.411 Applicability

The part 135 airplane inspections and records review requirements in the final rule, which applies to multiengine airplanes certificated for nine or fewer passenger seats, are now under § 135.422. In addition, the FAA has removed the requirements under § 135.423 and has redesignated § 135.423 as § 135.424. As a result, the FAA had to amend § 135.411(a)(1), which lists the part 135 aircraft maintenance requirements sections for aircraft with nine or fewer passenger seats. Additionally, we had to amend § 135.411(a)(2), which lists the part 135 aircraft maintenance requirements sections for aircraft with 10 or more passenger seats. In § 135.411(a)(1), we removed the reference to § 135.423 and added a reference to § 135.422. In § 135.411(a)(2), we removed the reference to § 135.422.

Cost Benefit Analysis

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

$100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not create obstacles to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This regulatory evaluation assesses the economic impacts of the changes to the IFR. Following the FAA's review of industry comments and the FAA's reassessment of the Aging Airplane Safety Program, the FAA modified the requirements of the IFR. These changes to existing requirements have the economic impact of reducing costs. As the economic impact of the changes to the IFR is cost relieving, the rule does not warrant a full regulatory evaluation. The FAA provides the basis for this minimal impact determination below.

Under the terms of the final rule, the FAA will conduct spot inspections and records reviews of affected airplanes operating under parts 121, 129, and 135. These inspections and records reviews are based on the requirements in the Aging Airplane Safety Act (AASA), which requires the Administrator to conduct inspections and records reviews of aging aircraft. The FAA intends to conduct these activities during scheduled maintenance to minimize the cost to industry.

This final rule reduces compliance costs by narrowing the scope of airplane applicability for the supplemental inspections portion (§§ 121.370a, 129.16, 135.168) of the IFR. This final rule requires damage-tolerance-based inspections and procedures (supplemental inspections) for transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, and that, as a result of original type certification or later increase in capacity, have a maximum type-certificated passenger seating capacity of 30 or more, or a maximum payload capacity of 7,500 pounds or more.

As a result of narrowing the airplane applicability, the part 135 requirement and certain parts 121 and 129 requirements for supplemental inspections have been removed in the final rule. It would be costly for operators to develop inspection programs for the remaining small number of affected airplanes. The FAA found that as of 2002, about 50 percent of the small commuter fleet in use in 1997 was still operating in the U.S. By 2010, the FAA expects this percentage to decrease to only 11 percent (about 80 airplanes) or less. Therefore, the FAA has determined that the supplemental inspections for these airplanes are no longer needed. The FAA intends to address the discovery of any age-related problems for these airplanes through continued operational safety programs and ADs.

The FAA is removing the design-life goal requirements, which include part 121 Appendix N, part 129 Appendix B, and part 135 Appendix G, from the regulation. The IFR required supplemental inspection programs to be in place by December 5, 2007, for airplanes that exceeded their design-life goals. For those airplanes that had not reached their design-life goal, these inspection programs were not required until December 20, 2010. Since the compliance date for the damage tolerance requirements has been extended to December 20, 2010, this transition period is no longer needed.

The FAA has extended the compliance date from December 5, 2007 to December 20, 2010, for parts 121 and 129 operators to meet the DT-based supplemental inspection requirement. This extension will provide operators additional time to develop to incorporate DT-based inspection and procedures into their maintenance program. The FAA believes this extension is necessary to provide industry enough time to develop the DT-based inspections and for operators to incorporate these inspections and procedures into their maintenance programs. The extension will also allow ample time to train inspectors.

The FAA estimates this final rule will provide substantial cost savings to operators of multi-engine airplanes with less than 30 seats. Additionally, this final rule will provide cost savings by extending the supplemental inspections compliance date from 2007 to 2010 for all affected operators. The final rule provides cost relief and imposes no added costs. The benefits to this rule are the cost relief provided by extending the damage tolerance compliance time and narrowing the airplane applicability for DT-based inspections and procedures. Therefore, the FAA has determined the benefits of this regulatory action justify the costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' Under that principle, the Act requires agencies to solicit and consider flexible regulatory proposals, and to consider the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed, or final, rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The changes to the IFR are cost relieving, thus are not expected to have a significant economic impact on a substantial number of small entities. The FAA presents the factual basis below.

For the IFR, the FAA conducted a complete regulatory flexibility analysis to assess the impact on small entities. This rule will affect operators of certain airplanes operated under parts 121, 129, and 135. For operators, a small entity is defined as one with 1,500 or fewer employees. As there are operators that meet these criteria for a small business, calculations were done to assess whether the rule will have a significant impact on a substantial number of these operators.

Issues To Be Addressed in a Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the Initial Regulatory Flexibility Analysis, is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economic impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5) of the RFA, appear in items 1 through 5 below. The FAA's response follows each requirement.

(1) A succinct statement of the need for, and objectives of, the rule.

This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. Section 44717 of Title 49 U.S.C. instructs the Administrator to ''prescribe regulations that ensure the continuing airworthiness of aging aircraft.'' The law also requires ''the Administrator to make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation.'' The objectives of the rule are to ensure the continuing airworthiness of aging airplanes operating in air transportation.

(2) A summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

There were few public comments explicitly on the Initial Regulatory Flexibility Analysis. There were several comments from part 135 operators that discuss the financial burden the IFR would place on them. Many part 135 operators have fewer than 1,500 employees and are considered small entities.

In response to public comments, the FAA revised the supplemental inspection requirement by narrowing the applicability to transport category, turbine powered airplanes with a type certificate issued January 1, 1958, that because of original type certification or later increase in capacity, have a maximum type-certificated passenger seating capacity of 30 or more or a maximum payload capacity of 7500 pounds or more. This change excepted part 135 operators from having to implement a supplemental inspection program.

(3) A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.

On December 8, 2003, the Aging Airplane Safety IFR was codified. After the FAA's review of the Aging Airplane Program and comments to the IFR, the FAA made the changes to the IFR that are reflected in this final rule. The FAA has determined that these changes impose no additional costs and provide cost relief to small entities. No description or estimated number of small entities is given as the final rule provides only cost relief to these operators.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The changes to the IFR will result in no additional paperwork burden.

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The changes the FAA made to the IFR resulted in part 135 operators not having to implement supplemental inspection programs. This decreased the cost burden for these operators, many of whom are small entities.

Description of Alternatives

The FAA considered several alternative approaches to this rulemaking action. One was to retain the provisions of the rule as set forth in the IFR. The FAA rejected this alternative after a review of the Aging Airplane Program initiatives and comments to the IFR. We determined that better aligning certain compliance dates in existing aging airplane rules and pending proposals and making certain substantive changes to them would increase their cost-effectiveness without compromising safety. The FAA included the Aging Airplane Safety rule in the review. The results were the removal of the supplemental inspection requirement for certain airplanes and the extension of the supplemental inspection compliance date for those airplanes still subject to the rule.

Another alternative came from commenters to the IFR. They recommended the FAA withdraw the rule. The FAA rejected this alternative because the rule is based on a congressional mandate, which requires the FAA to implement regulations to ensure the continuing airworthiness of aging aircraft.

Compliance Assistance

The FAA has tasked the Aviation Rulemaking Advisory Committee (ARAC) to review and make recommendations on the contents of AC 91–56B, Continuing Structural Integrity Programs for Airplanes. This AC will provide guidance to develop damage-tolerance-based SSIPs. The FAA intends to publish this AC before the December 20, 2010 compliance date specified in this rule. The FAA also intends to publish AC 120–84, Aging Airplane Inspections and Records Review, concurrently with this rule to help operators in complying with the airplane inspections and records reviews required by this rule.

Paperwork Reduction Act

Information collection requirements in the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers: 2120–0020, 2120–0008, and 2120–0039. Part 129 record requirements can be found in International Civil Aviation Organization Annexes.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The

FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Air carriers, Air transportation, Aircraft, Aviation safety, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration adopts the interim final rule (IFR) published at 67 FR 72726 on December 6, 2002, and revised by technical amendment (68 FR 69307, December 12, 2003), as a final rule with the following changes:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend § 121.368 by revising paragraphs (d)(2) and (d)(8) introductory text to read as follows:

§ 121.368 Aging airplane inspections and records reviews.

* * * * *

(d) * * *

(2) Total time in service of the airframe;

* * * * *

(8) Current status of applicable airworthiness directives, including the date and methods of compliance, and if the airworthiness directive involves recurring action, the time and date when the next action is required:

* * * * *

■ 3. Revise § 121.370a to read as follows:

§ 121.370a Supplemental inspections.

(a) *Applicability.* Except as specified in paragraph (b) of this section, this section applies to transport category, turbine powered airplanes with a type certificate issued after January 1, 1958, that as a result of original type certification or later increase in capacity have—

(1) A maximum type certificated passenger seating capacity of 30 or more; or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *Exception.* This section does not apply to an airplane operated by a certificate holder under this part between any point within the State of Alaska and any other point within the State of Alaska.

(c) *General requirements.* After December 20, 2010, a certificate holder may not operate an airplane under this part unless the following requirements have been met:

(1) The maintenance program for the airplane includes FAA-approved damage-tolerance-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure. These inspections and procedures must take into account the adverse affects repairs, alterations, and modifications may have on fatigue cracking and the inspection of this airplane structure.

(2) The damage-tolerance-based inspections and procedures identified in this section and any revisions to these inspections and procedures must be approved by the Aircraft Certification Office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator. The certificate holder must include the damage-tolerance-based inspections and procedures in the certificate holder's FAA-approved maintenance program.

Appendix N To Part 121 [Removed]

■ 4. Amend part 121 by removing Appendix N.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 5. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec 104.

■ 6. Revise § 129.16 to read as follows:

§ 129.16 Supplemental inspections for U.S.-registered aircraft.

(a) *Applicability.* This section applies to U.S.-registered, transport category, turbine powered airplanes with a type certificate issued after January 1, 1958 that as a result of original type certification or later increase in capacity have—

(1) A maximum type certificated passenger seating capacity of 30 or more; or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *General requirements.* After December 20, 2010, a foreign air carrier or foreign person may not operate an airplane under this part unless the following requirements have been met:

(1) The maintenance program for the airplane includes FAA-approved

damage-tolerance-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure. These inspections and procedures must take into account the adverse affects repairs, alterations, and modifications may have on the fatigue cracking and the inspection of this airplane structure.

(2) The damage-tolerance-based inspections and procedures identified in this section and any revisions to these inspections and procedures must be approved by the Aircraft Certification Office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator. The operator must include the damage-tolerance-based inspections and procedures in the operator's FAA-approved maintenance program.

■ 7. Amend § 129.33 by revising paragraphs (c)(2) and (c)(8) introductory text to read as follows.

§ 129.33 Aging airplane inspections and records reviews for U.S.-registered multiengine aircraft.

* * * * *

(c) * * *

(2) Total time in service of the airframe;

* * * * *

(8) Current status of applicable airworthiness directives, including the date and methods of compliance, and if the airworthiness directive involves recurring action, the time and date when the next action is required:

* * * * *

Appendix B To Part 129 [Removed]

■ 8. Amend part 129 by removing Appendix B.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 9. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

§ 135.168 [Removed and reserved]

■ 10. Remove and reserve §135.168.

■ 11. Amend § 135.411 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 135.411 Applicability.

(a) * * *

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under parts 91 and 43 of this chapter and §§ 135.415, 135.416, 135.417, 135.421 and 135.422. An approved aircraft inspection program may be used under § 135.419.

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415, 135.416, 135.417, and 135.423 through 135.443.

* * * * *

■ 12. Amend part 135, by revising § 135.422 to read as follows:

§ 135.422 Aging airplane inspections and records reviews for multiengine airplanes certificated with nine or fewer passenger seats.

(a) *Applicability.* This section applies to multiengine airplanes certificated with nine or fewer passenger seats, operated by a certificate holder in a scheduled operation under this part, except for those airplanes operated by a certificate holder in a scheduled operation between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspections and records review.* After the dates specified in this paragraph, a certificate holder may not operate a multiengine airplane in a scheduled operation under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (b) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total time in service of the airframe;

(3) Date of the last inspection and records review required by this section;

(4) Current status of life-limited parts of the airframe;

(5) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(6) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(7) Current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required;

(8) A list of major structural alterations; and

(9) A report of major structural repairs and the current inspection status for these repairs.

(e) *Notification to the Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

§ 135.423 [Removed]

■ 13. Amend part 135 by removing § 135.423.

§ 135.424 [Redesignated]

■ 14. Redesignate § 135.424 as § 135.423.

Appendix G To Part 135 [Removed]

■ 15. Amend part 135 by removing Appendix G.

Issued in Washington, DC, on January 25, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–1756 Filed 2–1–05; 8:45 am]

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Federal Register

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Part III

Department of Health and Human Services

Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects

AGENCY: Office of the Secretary.

Announcement Type: Initial.

CFDA: A description of the Title XX program can be found at the OMB Catalog of Federal Domestic Assistance 93.995.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Office of Grants Management no later than April 4, 2005. Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Standard time on the application due date. Applications will not be accepted by fax, nor will the submission deadline be extended. The application due date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread. See heading ''Application and Submission Information'' for additional information.

SUMMARY: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents, and their families. These grants are for public or private nonprofit organizations or agencies to find effective means of strengthening families by providing an array of services that help prevent repeat pregnancy and provide adolescent mothers, fathers and/or male partners, and their babies with services that enhance their well-being. Faith-based organizations are encouraged to apply. See heading ''Care Services'' for additional information.

The Office of Adolescent Pregnancy Programs (OAPP) of the Office of Population Affairs (OPA) requests applications for care demonstration grants under the Adolescent Family Life (AFL) Demonstration Projects Program, as authorized by Title XX of the Public Health Service Act. These Title XX grants should clearly and consistently establish comprehensive and integrated approaches to the delivery of care services to pregnant adolescents, adolescent parents, their children, their extended family members, fathers of their children, and/or male partners to whom they are married or in a long-term relationship.

I. Funding Opportunity Description

Care Services

Under this announcement, funds are available for care projects only. The project site or sites must be identified in the application rather than selected after the grant is awarded. The OAPP encourages services that involve not only the young fathers and/or male partners, but also the parents and families of the pregnant and/or parenting adolescent.

Under the Title XX statute, the primary purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger. Care services should promote the involvement of the pregnant and parenting adolescents' families, young fathers and/or male partners. The OAPP encourages the submission of care applications which propose to: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings; (2) provide care services to minority or other disadvantaged populations; (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally; (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement; (5) involve males and promote male responsibility (e.g., through job training, parenting classes, and counseling); (6) provide education on how to build and maintain healthy relationships, prepare for marriage, parenting and future families; (7) assure identification of mental health concerns and referral to appropriate resources; and (8) provide STD and HIV/AIDS awareness and prevention counseling. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs.

Under the statutory requirements of Title XX, applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of STDs, including HIV/AIDS;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the providers of sex education; and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services; and

(10) Counseling and referral for family planning services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with sec. 2006(a)(17) of Title XX (42 U.S.C. 300z–5(a)(17)), applicants must make maximum use of funds available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Youth Development or Developmental Assets Approach

Achieving a successful transition into adulthood for adolescents can be difficult and this is particularly so for pregnant and parenting adolescents. Research has clearly shown that future educational and economic prospects for teens decline significantly if they have a baby. Teen pregnancy is closely linked to less than optimal health outcomes for mother and infant, school dropout, lack of job skills, repeat pregnancies, poverty, and unstable home environments. To help address these multiple problems, the OAPP encourages applicants to incorporate youth development concepts into their care programs.

All adolescents need to see hope for their future, acquire the skills necessary to turn hope into reality, and be provided with opportunities to help them reach that reality. Examples of youth development activities in a care program are ones that address school retention and completion, job and vocational training, building and maintaining healthy relationships, building skills, confidence and self-efficacy, and avoiding health risks such as tobacco, alcohol, drug use, and repeat pregnancy. These types of activities contribute to strengthening the support systems these young parents need to achieve productive futures. Where possible, adolescents should be an integral part of the design, implementation, and evaluation of this approach. All services provided by AFL grantees, however, including all activities that are part of a youth development approach, must be within the scope of the Title XX care services listed above.

Parental, Family, and Male Involvement

Strengthening families is a primary focus for the OAPP. In the case of adolescent parents, this includes not only providing health, educational, and social services for the adolescent who is pregnant and/or parenting, but also finding ways to ensure the healthy involvement of the infant's father and the family of the adolescent. Research has clearly shown the importance of families in the social, emotional, and intellectual growth of children. Adolescent parents are still adolescents; they need the involvement and support of their own parents as they continue their transition to adulthood. Successful care programs should address these issues by including a component that engages families, fathers, or male partners in creative and meaningful ways. Teen mothers, fathers, or male partners to whom they are married or in a long-term relationship, need encouragement and skills to establish stable, safe families.

Goals and Objectives

All applications should include a program goal(s) statement and related outcome objectives. A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. Outcome objectives should be described in terms that measure the results the project will bring about (*e.g.,* decrease in repeat adolescent births among the treatment group; increase in parenting skills). Good applications should contain 3–5 outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

*S*pecific: An objective should specify one major result directly related to the program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

*M*easurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

*A*chievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

*R*ealistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

*T*ime-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, etc. The Public Management Institute, How to Get Grants (1981).

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent, but not more than five percent, of the Federal funds received under Title XX on evaluation of the project. In cases in which a more rigorous or comprehensive evaluation effort is proposed (see sec.2006(b)(1)) waivers of the five percent limit on evaluation may be granted by OAPP. Under this announcement, the OAPP is requesting applications for evaluation-intensive projects. For evaluation-intensive projects, the OAPP will waive the five percent limit up to a maximum of 20 percent. In turn, applicants are expected to include a clear and fully developed evaluation plan that generally meets the following six criteria.

1. The evaluation plan should be directly tied to program objectives. Research hypotheses should be clearly stated and reflect the outcomes the program intends to achieve.

2. The evaluation plan should include a process or implementation evaluation. Evaluations in their first year should focus on determining that the intervention is in place, that it is adequately and appropriately staffed, and that it is reaching its intended population.

3. The evaluation plan should have a viable comparison strategy. If a true experimental design with random assignment is not possible, a quasi-experimental design with matched comparison group would be acceptable.

4. The evaluation plan should have a sufficient sample size to ensure that any observed differences between groups are significant.

5. The evaluation plan should measure dosage. Client participation and use of various service components should be carefully tracked so that any differences can be corrected for, or at least taken into account, in discussion of evaluation results.

6. The evaluation plan should include a follow-up assessment and longitudinal tracking of program participants during and after the intervention.

In addition, applications should clearly demonstrate the capacity to participate in a cross-site evaluation, as well as the understanding that use of a core evaluation instrument, currently being developed by the OAPP, will be incorporated into the outcome evaluation design. Section 2006(b)(2) of Title XX requires that evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluation, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator. It is important to establish this relationship when preparing the application to ensure that the project's goals and objectives and the evaluation plan are consistent with each other.

Curricula Review

The grantee shall submit all curricula and educational materials for use in the

AFL project, whether currently available or to be developed by the grantee to the OAPP for review and approval prior to use in the project. The review shall ensure that the materials are medically accurate, consistent with Title XX policies on religion, and in compliance with the statutory prohibitions against advocating, promoting, encouraging, or providing abortions.

Applicants should describe current and proposed efforts to prevent the sexual coercion and exploitation of teens by older partners, as well as management and reporting that comply with State reporting laws regarding child sexual abuse, sexual assault (including statutory rape), incest, or family violence in their proposals. For more information, applicants may access the National Clearinghouse on Child Abuse and Neglect Web site at *http://nccanch.acf.hhs.gov.*

II. Award Information

Under this program announcement, the OAPP intends to make available approximately $5 million to support an estimated 15–20 new care demonstration grants, up to a maximum of $375,000 each per year. Any application that proposes funding over the maximum will not be considered. Please note, in Fiscal Year (FY) 2001, the OAPP issued a similar Request for Applications (RFA) announcing approximately $5 million for new care demonstration projects. In response to that RFA, OAPP received 142 grant applications and was able to fund only 19 new projects. Grants may be approved for project periods of up to five years, and are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

Applications are encouraged from organizations which are currently operating programs that have the capability of expanding and enhancing these services to serve significant numbers of pre-adolescent and adolescents according to the guidelines specified in this announcement. Applications are also encouraged from organizations that have the capability to conduct a rigorous evaluation of the funded project.

III. Eligibility Information

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards. Faith-based and community-based organizations are encouraged to apply for AFL grants. Please note, however, that AFL funds may not be used for inherently religious activities, such as worship, religious instruction, and proselytization. If an organization engages in such activities, they must be offered separately in time or location from the program funded under the AFL program and participation must be voluntary for program beneficiaries. An AFL program, in providing services and outreach related to program services, cannot discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

Cost Sharing

Section 2005(c)(2) authorizes that an AFL grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The AFL non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment, and services. Other Federal funds may not be used as an in-kind contribution.

IV. Application and Submission Information

Address To Request Application Package

Application kits may be requested from, and submitted to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, 301–594–0758. Application kits are also available online at the electronic grants management website (e-Grants) at *https://egrants.osophs.dhhs.gov/.* Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (301) 594–9399.

Content and Form of Application

Application kits consisting of the OPHS–1 and appropriate forms, a copy of the Title XX legislation, a computer based technical assistance program to instruct applicants in the Title XX grant writing process, and guidance on the application process may be downloaded from the OPA Web site at *http://opa.osophs.dhhs.gov.* If you do not have access to the Internet, you may obtain a kit from the OPHS Office of Grants Management; 1101 Wootton Parkway, Suite 550; Rockville, MD 20852; by phone at 301–594–0758. The computer based technical assistance program on CD-Rom will be included in the kit. All completed applications must be submitted to the OPHS Office of Grants Management at the above mailing address. In preparing the application, it is important to follow ALL instructions provided in the application kit.

Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 50 double-spaced pages, not including appendices and required forms, using an easily readable, 12 point font. All pages, figures, and tables should be numbered.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps necessary to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

Submission Mechanisms

The OAPP provides multiple mechanisms for submission of applications as described in the following sections.

Electronic Submission: The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. While applications are accepted in hard copy, the use of the electronic application submissions capabilities provided by the eGrants system is encouraged. Information about this system is available on the OPA Web site at *http://opa.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at 301–594–0758. Applications sent via any other means of electronic communication, including facsimile or electronic mail, outside of the OPHS eGrants system will not be accepted for review.

The body of the application and required forms can be submitted using the e-Grants system. In addition to electronically submitted materials, applicants are required to provide a hard copy of the application face page (Standard Form 424 [Revised 07/03]) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The application is not considered complete until both the electronic application and the hard copy of the face page with the original signature are received.

Electronic grant application submissions must be submitted no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. All required hard copy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically after 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hard copy original signatures to the OPHS Office of Grants Management by 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission, the eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide the receipt status of all indicated signatures and items to be mailed to the OPHS Office of Grants Management. As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application to ensure that all signatures and mail-in items are received.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submission prior to the application deadline.

Mailed Hard Copy Applications: Applications submitted in hard copy must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

Hand-Delivered Applications: Hand-delivered applications must be received by the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852, no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. Hand-delivered applications must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Intergovernmental Review

Applications for AFL grants must also meet both of the following requirements (each year):

(1) Requirements for Review of an Application by the Governor. Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements). Applications under this announcement are subject to the review requirements of E.O. 12372, ''Intergovernmental Review of Federal Programs,'' as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. Information about the SPOC is located on the OMB Web site *http://www.whitehouse.gov/omb/grants/spoc/html.* The SPOC's comment(s) should be forwarded to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Funding Restrictions

Applicants for discretionary grants are expected to anticipate and justify their funding needs and the activities to be carried out with those funds in preparing the budget and accompanying narrative portions of their applications. The basis for determining the allowability and allocability of costs charged to Public Health Service (PHS) grants is set forth in 45 CFR parts 74 and 92. If applicants are uncertain whether a particular cost is allowable, they should contact the OPHS Office of Grants Management at 301–594–0758 for further information.

V. Application Review Information

Criteria

Eligible competing grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and will be assessed according to the following criteria:

(1) The applicant's presentation of a detailed evaluation plan that indicates an understanding of program evaluation methods, reflects a practical and technically sound approach to assessing

both the project's implementation and its outcomes, demonstrates the capacity to participate in a cross-site evaluation, and the intent to incorporate the AFL care evaluation instrument into the outcome evaluation design. The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable, and clear statements of expected results. (30 points)

(2) The applicant's presentation of an innovative, detailed, and viable plan to involve fathers and/or male partners, parents and other family members, as well as strategies for recruitment and retention. (20 points)

(3) The applicant's presentation of an organizational model for service delivery with appropriate design, consistent with the requirements of Title XX that incorporates an innovative youth development or developmental assets approach. (10 points)

(4) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents. (10 points)

(5) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. (10 points)

(6) The population the project proposes to serve, including ethnic composition, number of adolescent and pre-adolescent clients, fathers and/or male partners, family members, and community members. The applicant must specify how program staff demonstrate cultural and ethnic responsiveness to the target population. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century. The two goals of Healthy People 2010 are to increase quality of years of healthy life and to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve minority populations in order to eliminate health disparities.] (10 points)

(7) The community commitment to, and involvement in, planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

Review and Selection Process

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA). In making these decisions, the DASPA will take into account the extent to which applications recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores submitted by the review panels;

(2) The geographic area to be served, particularly the underserved areas and populations;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area;

(4) The adequacy of the evaluation plan, including incorporation of the six evaluation criteria listed in the ''Evaluation'' section of this announcement, and the demonstrated ability to participate successfully in a cross-site evaluation; and

(5) The usefulness for policymakers and service providers of the proposed project and its potential for replication.

Special consideration may be granted to underserved areas and populations not currently receiving Title XX funding for care programs. However, all applicants are required to adhere to the DASPA criteria as set forth in this announcement. Please note that if there are multiple applicants from one State, the DASPA may elect to select only one applicant per State.

VI. Award Administration Information

Award Notices

The OAPP does not release information about individual applications during the review process until final funding decisions have been made. When final funding decisions have been made, the applicant's authorized representative will be notified of the outcome of their application by postal mail. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB Home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Reporting Requirements

Applicants funded under this grant announcement will be required to electronically submit an End-of-Year Program, Evaluation and Financial report 90 days after the grant budget period ends. The Project Director and Evaluator are expected to attend an annual OAPP sponsored conference, as well as other OAPP sponsored training.

VII. Agency Contacts

Administrative and Budgetary Requirements

For information related to administrative and budgetary requirements, contact the OPHS Office of Grants Management, 1101 Wootton

Parkway, Suite 550, Rockville, MD 20852; 301–594–0758.

Program Requirements

For information related to the OAPP program requirements, the OAPP staff are available at 301–594–4004 to answer questions and provide technical assistance on the preparation of grant applications. Questions may also be directed to the OAPP staff via e-mail at *http://oapp@osophs.dhhs.gov.* If contacting the OAPP by e-mail, please include the phrase ''AFL Care Question'' in the subject heading.

VIII. Other Information

Technical Assistance

The OAPP has scheduled a series of technical assistance workshops to help prospective applicants at no cost. At each of the one-day workshops, the public will be able to learn more about the purposes and requirements of the Title XX program, how to apply for funds under this program announcement, program eligibility requirements, the application selection process, and considerations that might help to improve the quality of grant applications. The OAPP encourages applicants to send a financial representative from their agency to the workshop. All participants must preregister using the form at *http://opa.osophs.dhhs.gov* or you may obtain a registration form from the OAPP at 301–594–4004. Written requests for registration forms may be faxed to 301–594–5981. The address of workshop locations and logistical information will be faxed or e-mailed to you upon receipt of your registration. The sessions are scheduled for the week of February 28–March 4, 2005, in the following locations. Alexandria, VA, Portland, OR, Kansas City, MO, Detroit, MI, Nashville, TN, Albuquerque, NM.

In addition to the technical assistance workshops, a free interactive computer based technical assistance program is available to instruct applicants in the Title XX grant writing process. The Computer Based Technical Assistance Program can be downloaded at the OPA Web site at *http://opa.osophs.dhhs.gov.* If you do not have access to the Internet, a CD–Rom is included in the hard copy of the application kit which can be obtained from the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 301–594–0758.

Dated: January 14, 2005.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 05–1960 Filed 2–1–05; 8:45 am]

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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 "P L U S" (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.*

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 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)

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

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