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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV05–983–4 FIR]

Pistachios Grown in California; Establishment of Procedures for Exempting Handlers From Minimum Quality Testing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established procedures for exempting handlers from quality requirements, including maximum limits for quality defects and minimum size, prescribed under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). These procedures will be used by the committee in considering handler requests for exemptions from minimum quality testing requirements and when considering revocations of such exemptions. Additionally, this final rule continues in effect the establishment of an appeals process for handlers who have been denied an exemption or had an approved exemption revoked.

EFFECTIVE DATE: November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the establishment of procedures for use by the committee in exempting handlers from minimum quality (maximum limits for quality defects and minimum size) testing requirements prescribed under the order. The committee, or its duly authorized agents, will also use these procedures when considering the revocation of exemptions for good cause, and when considering appeals of handlers who have had exemptions denied or revoked.

Section 983.46 of the pistachio order authorizes the committee to recommend that the Secretary modify or suspend the order provisions contained in §§ 983.38 through 983.45. These sections were implemented on August 1, 2005.

Section 983.41 of the pistachio order authorizes exemptions from minimum quality testing requirements for handlers handling less than 1 million pounds of assessed weight pistachios per production year (September 1–August 31) and specifies that the committee may grant handler exemptions. For the purposes, of this document, the term ''production year'' is synonymous with ''marketing year''.

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight (assessed weight) pistachios (dried to 5 percent moisture) during any marketing year from all assessment, aflatoxin, and minimum quality requirements.

Section 983.147 of the pistachio order establishes handler reporting requirements (ACP Forms 2–7) and exempts handlers who handle 1,000 pounds or less of dried weight pistachios from all reporting requirements with the exception of ACP Form–4. Handlers who have handled or intend to handle 1,000 pounds or less of dried weight pistachios during the production year (September 1–August 31) must submit ACP Form–4 by November 15 each year to the committee.

The recommended decision, published on August 4, 2003, (68 FR 45990), indicated that implementing regulations would effectuate the declared policy of the Act by establishing the specific procedures for exempting handlers who handle more than 1,000 pounds and less than 1 million pounds of assessed weight pistachios per production year (September 1–August 31) from minimum quality testing requirements.

Under these authorities, the committee at its April 12, 2005, meeting, unanimously recommended establishing a new section entitled,

''§ 983.141—Procedures for Exempting Handlers from Minimum Quality Testing'' to specify appropriate exemption, revocation, and appeal procedures. The committee believes that standardized procedures would ensure equitable treatment of applicants for exemptions and those handlers subject to the revocation of such exemptions.

The committee also recommended that handler exemptions under § 983.41(b) not be granted if a handler failed to file required reports, shipped substandard pistachios, or failed to comply with the requirements specified in § 983.41 on exemptions for minimum quality testing. Revocation of approved exemptions could be implemented by the committee, or its duly authorized agents, for the same reasons.

Additionally, the committee recommended that any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked by the committee should be allowed to appeal the committee's action to USDA. The committee recommended that the USDA review any appeals and determine their merit. All appeals must be submitted in writing, and the committee will provide USDA the complete file on each appeal.

The recommended exemption procedures require the committee, or its duly authorized agents, to timely notify all handlers of the opportunity to apply to be exempted from minimum quality testing so that all interested handlers can submit applications on forms provided by the committee by the August 1 deadline; promptly review all requests for exemption; verify that the quantity of assessed weight pistachios handled by any applicants during the prior production year was less than 1 million pounds of assessed weight and that applicants are in compliance with the order's inspection, quality, and reporting requirements; approve or disapprove requests for exemptions by August 20 of each year; maintain complete files concerning the approval or disapproval of each handler's application; and notify handlers by August 30 of approval or disapproval.

A handler's exemption would be revoked by the committee, or its duly authorized agents, if the handler fails to provide reports required under this part, or has not complied with the provisions on minimal quantity testing in § 983.41. Additionally, the committee, or its duly authorized agents, would revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the applicable production year. The revocation of a handler's exemption would be made in writing to the handler and specify the reason(s) for and the effective date of the revocation.

Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked may appeal to USDA for reconsideration within 20 days after notification of the committee's findings. All appeals must be in writing.

The committee, or its duly authorized agents, shall forward all pertinent information related to the handler's appeal to USDA. USDA shall inform the handler and all interested persons of the Secretary's decision.

As previously mentioned, under § 983.70 of the order, this rule continues in effect the application to handlers handling more than 1,000 pounds and less than 1 million pounds because handlers who handle 1,000 pounds or less of dried weight pistachios are exempt from assessment, aflatoxin, and minimum quality requirements and from all reporting requirements under § 983.147 of the order's administrative rules and regulations, with the exception of filing ACP Form–4.

Final Regulatory Flexibility Analysis

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

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

There are approximately 24 handlers of California pistachios who are subject to regulation under the order and about 741 producers of pistachios in the production area. The Small Business Administration (SBA) (13 CFR 121.20) defines small agricultural service firms as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Seventeen of the 24 handlers subject to regulation have annual pistachio receipts of less than $6,000,000. In addition, 722 of the 741 producers have annual receipts less than $750,000. Therefore, a majority of handlers and producers may be classified as small entities under the SBA standards.

This rule continues in effect the establishment of procedures for exempting handlers from minimum quality (maximum limits for quality defects and minimum size) testing requirements prescribed under the order. These procedures will be used by the committee when considering handler requests for exemptions from minimum quality testing requirements and when considering revocations of such exemptions. Additionally, this rule continues in effect the establishment of an appeals process for handlers who have been denied an exemption or had an exemption revoked.

Section 983.41(a) of the pistachio order permits handlers who handle less than 1 million pounds of assessed weight pistachios each production year (September 1–August 31) to use optional aflatoxin testing methods. The optional methods permit the sampling and testing of a handler's entire inventory before further processing, and allow handlers to segregate their receipts into various lots for sampling and testing.

Section 983.41(b) of the pistachio order authorizes handler exemptions from minimum quality testing for handlers who handle less than 1 million pounds of assessed weight pistachios per production year, and specifies that the committee may grant such handler exemptions.

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight (assessed weight) pistachios (dried to 5 percent moisture) during any marketing year from all assessment, aflatoxin, and minimum quality requirements. For the purposes of this document, the term ''marketing year'' is synonymous with ''production year'' and represents the period September 1 through August 31.

The recommended decision, published on August 4, 2003, (68 FR 45990), indicated that implementing regulations would effectuate the declared policy of the Act by establishing the specific procedures for exempting handlers who handle more than 1,000 pounds and less than 1 million pounds of assessed weight pistachios per production year (September 1–August 31) from minimum quality testing requirements.

Under these authorities, the committee at its April 12, 2005, meeting, unanimously recommended establishing standardized procedures for granting and revoking handler exemption requests, and considering handler appeals on exemption decisions. This action will have a

positive impact on small and large handlers by assuring that all exemption applications and reviews are handled equitably following approved standardized procedures.

The committee discussed alternatives to this change, including not making any changes, but determined that specific procedures were needed to facilitate: (1) Exempting handlers from minimum quality testing; (2) revoking exemptions when handlers violate requirements under the marketing order; and (3) processing appeals to the committee's actions. These procedures are expected to ensure that all such requests are treated equitably. The committee's vote was unanimous.

The information collection requirements for the ACP Form–5, which handlers will complete and forward to the committee to request exemption from minimum quality requirements under the order, was previously submitted to the Office of Management and Budget (OMB) and approved under OMB No. 0581–0230. Thus, this action will not impose any additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Further, the committee's meetings are widely publicized throughout the pistachio industry and all interested persons are encouraged to attend the meetings and participate in the committee's deliberations. Like all committee meetings, the April 12, 2005, meeting was a public meeting and all entities, both large and small, were encouraged to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on July 22, 2005 (70 FR 42256). Copies of the rule were provided to the committee and handlers by the committee staff. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended September 20, 2005. No comments were received.

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

After consideration of all relevant material presented, including the committee's recommendation and other information, it is found that this finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 42256, July 22, 2005), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 983, which was published at 70 FR 42256 on July 22, 2005, is adopted as a final rule without change.

Dated: October 24, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–21489 Filed 10–27–05; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC90

Deposit Insurance Coverage; Accounts of Qualified Tuition Savings Programs Under Section 529 of the Internal Revenue Code

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule governing the insurance coverage of deposits of qualified tuition savings programs under section 529 of the Internal Revenue Code. The final rule makes no substantive changes to a previous interim final rule. Under the rule, the deposits of a qualified tuition savings program will be insured on a ''pass-through'' basis to the program participants. In other words, the deposits will be insured up to $100,000 for the interest of each participant in aggregation with the participant's other deposits (if any) at the same insured depository institution.

DATES: The final rule will be effective on December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Qualified Tuition Programs

Section 529 of the Internal Revenue Code provides tax benefits for ''qualified tuition programs.'' See 26 U.S.C. 529(a). Such programs include prepaid tuition programs (which may be created by states or educational institutions) as well as tuition savings programs (which must be sponsored by states or public instrumentalities). See 26 U.S.C. 529(b)(1). A tuition savings program is defined by section 529 as a program under which a person ''may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account'' (and which meets certain requirements). 26 U.S.C. 529(b)(1)(A)(ii).

Under laws administered by the Securities and Exchange Commission (SEC), interests in a qualified tuition savings program must be sold by a public instrumentality (such as a state investment trust) so that the interests in the program will be exempt from registration under section 2(b) of the Investment Company Act. See 15 U.S.C. 80a–2(b). This means that a participant in a state qualified tuition savings program cannot acquire an asset through the program or public instrumentality. Rather, the participant must acquire an interest or account in the public instrumentality.

Some state 529 programs have provided participants with the option of investing their funds directly in bank deposits. Other state programs have expressed an interest in creating such an option. As stated above, participants in a 529 program must acquire an interest in the public instrumentality. They cannot acquire a particular asset. This means that the public instrumentality, not the participant, will be the legal owner of any bank deposit purchased by or through the public instrumentality.

The fact that any bank deposit will belong to the public instrumentality raises issues under the FDIC's insurance regulations. These issues are discussed below.

II. The FDIC's Regulation

Under the applicable section of the FDIC's insurance regulations, the deposits of a corporation are insured up to $100,000 in the aggregate. See 12 CFR 330.11(a)(1). This rule applies to ordinary corporations as well as to business or investment trusts that must file registration statements with the SEC. Generally, this rule also applies to investment trusts that would be required to file registration statements with the SEC ''but for'' certain sections of the Investment Company Act, including section 2(b).

An exception exists for the deposits of a qualified tuition savings program sponsored by a state or public instrumentality. Although such programs are covered by section 2(b) of the Investment Company Act, the FDIC does not treat the public instrumentality as a corporation with insurance coverage limited to $100,000 in the aggregate. Rather, the FDIC provides insurance coverage up to $100,000 for the interest of each investor or plan participant. The FDIC provides this ''pass-through'' coverage through an interim final rule published in June of 2005. See 70 FR 33689 (June 9, 2005).

In adopting the interim final rule, the FDIC relied upon the fact that qualified tuition savings programs—in placing participants' funds at banks in a manner that satisfies the FDIC's requirements for ''pass-through'' insurance coverage—do not function in the manner of ordinary business trusts or investment companies. In a qualified tuition savings program, the deposits are equivalent to brokered deposits. Assuming the satisfaction of certain disclosure requirements, brokered deposits are insured on a ''pass-through'' basis to the broker's customers. See 70 FR at 33691. Also, in adopting the interim final rule, the FDIC relied upon the Congressional purpose behind section 529. That purpose is to encourage persons to save money for post-secondary educational expenses. Without ''pass-through'' coverage of deposits, some persons may choose not to participate in 529 programs. *See id.*

III. The Public Comments

In response to the publication of the interim final rule, the FDIC received seven public comments. These comments were submitted by three bankers' associations, one state regulator, one holding company, one bank, and one banking information company.

One of the comments did not address the substance of the rule but noted a grammatical error (involving noun/verb agreement). The other comments supported the interim final rule, though two changes were suggested. Each of the suggested changes is discussed in turn below.

First, a recommendation was made to create a separate insurance category for the deposits of qualified tuition savings programs so that a participant's funds in a 529 deposit would not be aggregated with the participant's funds in other deposit accounts (if any) at the same insured depository institution. This suggested treatment would be similar to the FDIC's treatment of the deposits of employee benefit plans. *See* 12 CFR 330.14.

Although the FDIC recognizes the deposits of employee benefit plans as a separate ownership category for purposes of applying the $100,000 insurance limit, this special treatment is based upon a specific statutory provision. See 12 U.S.C. 1821(a)(1)(D). No such statutory provision exists for the deposits of qualified tuition savings programs. In the absence of any such statutory provision, the FDIC is reluctant to recognize a new deposit insurance ownership category.

Moreover, no apparent reason exists to treat the deposits of qualified tuition savings programs differently than deposits held by agents or custodians. In the case of such deposits, the FDIC provides ''pass-through'' insurance coverage (assuming the satisfaction of certain disclosure requirements) but the FDIC does not insure such deposits separately from all other deposits. Rather, the FDIC aggregates the funds of each owner with the owner's other accounts (if any) at the same insured depository institution. Under these circumstances, the FDIC has decided not to create a new deposit ownership category for the deposits of qualified tuition savings programs under section 529 of the Internal Revenue Code.

Second, a recommendation was made to include specific language about treating each participant's funds ''as a deposit account of the participant.'' Although this language would not change the substance of the rule, the suggested language could clarify the effect (*i.e.*, to provide separate insurance coverage for the funds of each participant). For this reason, the FDIC has adopted the suggested language.[1]

[1] In advocating the suggested change, this comment explained the change as follows: ''[The change] would * * * further ensure that the participant's funds * * * would be aggregated with other deposit accounts of the participant held in the same bank, where appropriate, or would be appropriately segregated from other deposit accounts held by the same participant provided there are separate qualifying designated beneficiaries.'' The reference to ''qualifying beneficiaries'' suggests that insurance coverage may be sought under 12 CFR 330.10. That section of the insurance regulations deals with revocable testamentary trust accounts. Under 12 CFR 330.10, such accounts are insured up to $100,000 for the funds contributed by each owner for the benefit of each beneficiary (with ''beneficiary'' meaning a person who shall become the owner of the funds upon the owner's death). See 12 CFR 330.10(a). This ''per beneficiary'' coverage is not available, however, unless certain requirements are satisfied. First, the title of the bank account must reflect the testamentary nature of the account. This requirement can be satisfied through the use of a term such as ''payable-on-death'' or ''POD.'' See 12 CFR 330.10(b). Second, the names of the testamentary beneficiaries must be identified somewhere in the bank's deposit account records. See id. Third, the beneficiaries must be ''qualifying beneficiaries'' (*i.e.*, the owner's spouse, children, grandchildren, parents or siblings). See 12 CFR 330.10(a). By expressly providing that the funds of each participant will be treated as a separate ''account,'' the FDIC does not mean to affect any of the requirements for obtaining insurance coverage under 12 CFR 330.10. For example, as a result of the first requirement, no coverage will be available under 12 CFR 330.10 unless the bank establishes an account with ''POD'' or similar term in the account title. Also, coverage under 12 CFR 330.10 will not be available for a participant's funds in a qualified tuition savings program unless the participant is permitted under 26 U.S.C. 529 and the applicable state law to designate one or more beneficiaries who will receive the funds in the event of the participant's death.

IV. The Final Rule

Under the final rule, the deposits of a qualified tuition savings program under section 529 of the Internal Revenue Code will not be treated as the deposits of a corporation with coverage limited to $100,000 in the aggregate. Rather, the deposits will be insured up to $100,000 for the interest of each participant or investor (in aggregation with any other deposits of the participant or investor at the same insured depository institution). Such ''pass-through'' coverage will not be available, however, unless two requirements are satisfied. First, the funds in the account must be traceable to one or more particular investors. Second, the existence of any trust or custodial relationships must be disclosed in accordance with the FDIC's requirements at 12 CFR 330.5.

In providing insurance coverage up to $100,000 for each ''participant,'' the FDIC means to provide coverage up to $100,000 for each owner of the securities issued by the public instrumentality. In the 529 programs reviewed by the FDIC, these ''participants'' are the persons who contribute the funds. These persons may be referred to as ''account owners.'' A distinction exists between these contributors or ''account owners'' and the ''designated beneficiaries'' (*i.e.*, the persons who will go to college someday).

In the programs reviewed by the FDIC, the contributors retain some rights with respect to the funds (*e.g.*, the right to withdraw money under certain circumstances or the right to change the beneficiary). Assuming that the qualified tuition savings program is structured in this manner so that the securities are owned by the contributors, then the FDIC will treat the contributors as the ''participants.'' If the program is structured so that the securities are owned by the ''designated beneficiaries,'' however, then the FDIC will treat the beneficiaries as the ''participants.'' For example, the beneficiary would be the ''participant'' if no one but the beneficiary possesses the right to withdraw funds or to name a different beneficiary.

Again, the FDIC simply means to provide ''pass-through'' insurance coverage to the actual owners of the securities. The FDIC does not mean to dictate the terms of a qualified tuition savings program. Such programs must adhere to the requirements of section 529 and the applicable state law.

Paperwork Reduction Act

This rule contains no new collections of information as defined by the Paperwork Reduction Act. *See* 44 U.S.C. 3501 *et seq.* Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking. See 5 U.S.C. 603, 604. Because the amendment to part 330 is being published in final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act, the FDIC will report this rule to Congress so that the rule may be reviewed. *See* 5 U.S.C. 801 *et seq.*

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trust and trustees.

■ For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Section 330.11(a)(2) is revised to read as follows:

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) * * *

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529). A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships is disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant's funds shall be insured as a deposit account of the participant.

* * * * *

Dated at Washington, DC, this 6th day of October, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–20766 Filed 10–27–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22795; Directorate Identifier 2005–NM–193–AD; Amendment 39–14353; AD 2005–22–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Aerospatiale Model ATR42 and ATR72 airplanes. This AD requires a one-time inspection to determine the part number or markings of the fuel quality indicator (FQI) and replacement of any FQI having an incorrect part number. This AD results from a report that an FQI having an incorrect part number was installed on a Model ATR72 airplane. We are issuing this AD to ensure that a correct FQI is installed. An incorrect FQI could result in fuel starvation to the engine and consequent engine shutdown during flight.

DATES: This AD becomes effective November 14, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 14, 2005.

We must receive comments on this AD by December 27, 2005.

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

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

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Aerospatiale Model ATR42 and ATR72 airplanes. The DGAC advises that a Model ATR72 airplane ditched off the coast of Italy. An investigation revealed that a fuel quality indicator (FQI) having an incorrect part number (P/N) was installed on the airplane. An FQI for the Model ATR72 airplanes may also be inadvertently installed on a Model ATR42 airplane if operators do not adhere to the manufacturer's service information. This condition, if not corrected, could result in fuel starvation to the engine and consequent engine shutdown during flight.

Relevant Service Information

Aerospatiale has issued ATR All Operators Message (AOM) 42–72/2005/08, issue 5, dated September 7, 2005. The AOM describes procedures to determine if the part number of the FQI is consistent with the one provided within the applicable illustrated parts catalog section 28–42–80–01. The DGAC mandated the AOM and issued French emergency airworthiness directive UF–2005–160, dated September 8, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to ensure that a correct FQI is installed. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the AD, the AOM, and the French Emergency Airworthiness Directive.''

Differences Among the AD, the AOM, and the French Emergency Airworthiness Directive

Although the French emergency airworthiness directive recommends accomplishing the inspection ''before next flight,'' we have determined that a compliance time of 7 days for completing the required actions is warranted because most U.S. operators have already completed the inspection. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. In light of all of these factors, we find a compliance time of 7 days represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the DGAC.

The French emergency airworthiness directive and the AOM specify to determine the correct P/N of the FQI. However, in addition to the inspection to determine the correct P/N, this AD allows operators to inspect the FQI for applicable markings to determine if the correct FQI is installed. The markings are illustrated in the AOM. This difference has been coordinated with the DGAC.

Although the French emergency airworthiness directive specifies reporting results to the manufacturer, this AD does not require those actions. We do not need this information from operators.

Interim Action

This AD is considered interim action. If final action is later identified, we may consider further rulemaking then.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22795; Directorate Identifier 2005–NM–193–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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 AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–22–09 Aerospatiale: Amendment 39–14353. Docket No. FAA–2005–22795; Directorate Identifier 2005–NM–193–AD.

Effective Date

(a) This AD becomes effective November 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Aerospatiale Model ATR42–200, –300, –320, and –500 airplanes, and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that a fuel quality indicator (FQI) having an incorrect part number was installed on a Model ATR72 airplane. We are issuing this AD to ensure that a correct FQI is installed. An incorrect FQI could result in fuel starvation to the engine and consequent engine shutdown during flight.

Compliance

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

Inspection and Corrective Action

(f) Within 7 days after the effective date of this AD, do the inspection specified in paragraph (f)(1) or (f)(2) of this AD.

(1) Perform an inspection to determine the part number (P/N) of the fuel quantity indicator (FQI) 3QT, in accordance with ATR All Operators Message (AOM) 42–72/2005/08, issue 5, dated September 7, 2005. Instead of the inspection, a review of the airplane maintenance records is acceptable if the P/N of the FQI can be positively determined from that review.

(2) Inspect the faceplate of the FQI to verify that it has the correct markings as specified in paragraphs (f)(2)(i) and (f)(2)(ii), as applicable.

(i) For Model ATR42–200, –300, –320, and –500 airplanes: The FQI has the marking of 4960 lbs on the faceplate as illustrated in ATR AOM 42–72/2005/08, issue 5, dated September 7, 2005.

(ii) For Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes: The FQI has the marking of 5500 lbs on the faceplate as illustrated in the AOM 42–72/2005/08, issue 5, dated September 7, 2005.

(g) If it can be positively determined, during the inspection required by paragraph (f) of this AD, that the FQI has the correct part number or marking, no further action is required by this AD.

(h) If it is determined, during the inspection required by paragraph (f) of this AD, that the FQI does not have the correct part number or marking, before further flight, install the FQI having the correct part number as specified in ATR AOM 42–72/2005/08, issue 5, dated September 7, 2005.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) French emergency airworthiness directive UF–2005–160, dated September 8, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use ATR All Operators Message (AOM) 42–72/2005/08, issue 5, dated September 7, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–21338 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 050803215–5260–02]

RIN 0625–AA69

Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (''the Department'') is amending its regulations related to sunset reviews to conform the existing regulation to the United States' obligations under Articles 6.1, 6.2, and 11.3 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''Antidumping Agreement''). The regulations amend the ''waiver'' provisions which govern treatment of interested parties who do not provide a substantive response to the Department's notice of initiation of a sunset review and clarify the basis for parties' participation in a public hearing in an expedited sunset review.

DATES: The effective date of this final rule is October 31, 2005. The final rule will be applied in sunset reviews initiated on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Stacy J. Ettinger or Patrick V. Gallagher, Office of the Chief Counsel for Import Administration, room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230; telephone: (202) 482–4618 or (202) 482–5053, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1998, the Department published regulations addressing the procedures for participation in, and conduct of, sunset reviews. See 63 FR 13516. On December 17, 2004, the Dispute Settlement Body (''DSB'') of the World Trade Organization adopted the reports of the Appellate Body and the dispute settlement panel in *United States—Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina,* WT/DS268/AB/R (November 29, 2004) and WT/DS268/R (July 16, 2004), respectively. The AB and the dispute settlement panel found that the waiver provisions of section 751(c)(4)(B) of the Tariff Act of 1930 and section 351.218(d)(2)(iii) of Commerce's sunset regulations are inconsistent with Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement.

Section 123 of the URAA governs the process for changes to the Department's regulations where a dispute settlement panel and/or the Appellate Body finds a regulatory provision to be inconsistent with any of the WTO agreements. Consistent with section 123(g)(1)(C), on August 15, 2005, the Department published proposed amendments to its regulations related to sunset reviews to conform the existing regulations to the United States' obligations under Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement. The Department received four sets of written public comments on the proposed amendments. The Department has carefully considered each of the comments it received, and has adopted a drafting suggestion from one commenter related to the issue of the basis for parties' participating in a hearing in an expedited sunset review. This final rule is published pursuant to section 123(g)(1)(F) of the URAA. The final rule amends the ''waiver'' provisions which govern treatment of interested parties who do not provide a complete substantive response to the Department's Notice of Initiation of a sunset review and clarifies the basis for parties' participation in a public hearing in an expedited sunset review.

Explanation of Amendments

In finalizing the amendments to the Department's regulations addressing the procedures for participation in, and conduct of, sunset reviews, the Department carefully considered each of the comments it received. The following is an explanation of the amendments, as well as a summary of the comments received and the Department's responses to those comments.

Section 351.218

Section 751(c)(4)(B) of the Tariff Act provides that where an interested party ''waives'' its participation in a sunset review, the Department ''shall conclude that revocation of the order * * * would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.'' Paragraph (d)(2) of 19 CFR 351.218 deals with the procedure for waiving participation in a sunset review before the Department. Specifically, paragraph (d)(2)(i) provides for filing a ''statement of waiver'' for parties electing not to participate in the Department's sunset review (so-called ''affirmative waiver''), and paragraph (d)(2)(iii) provides that failure to file a complete substantive response to a notice of initiation also will be treated as a waiver of participation (so-called ''deemed waiver''). The panel and Appellate Body found that the operation of the statutory and regulatory waiver provisions was inconsistent with the obligation under Article 11.3 to arrive at a ''reasoned conclusion'' because the Department's order-wide likelihood determination would be based, at least in part, on statutorily-mandated ''assumptions'' about a company's likelihood of dumping. The AB and panel also found that the operation of paragraph (d)(2)(iii) was inconsistent with ''due process rights'' of Articles 6.1 and 6.2, because the Department could assume likelihood with respect to a particular company even though that party had filed a substantive response to the notice of initiation, albeit an ''incomplete'' response.

To implement the AB and panel findings with respect to the operation of the waiver provisions, the Department has modified its regulations to eliminate the possibility that the Department's order-wide likelihood determinations would be based on assumptions about likelihood of continuation or recurrence of dumping or a countervailable subsidy due to interested parties' waiver of participation in sunset reviews. Specifically, the Department has made the following three modifications to paragraph (d)(2) of 19 CFR 351.218. First, with respect to so-called ''affirmative waivers'' set forth in paragraph (d)(2)(i)—which provides that a party may elect not to participate in the Department's sunset review by filing a ''statement of waiver'' within 30 days of initiation of the sunset review—the Department has amended the contents of a ''statement of waiver'' which are set forth in paragraph (d)(2)(ii). Paragraph (d)(2)(ii) now requires that a party filing a Statement of Waiver include a statement that it is likely to dump or benefit from a countervailable subsidy (as the case may be) or, in the case of a foreign government in a CVD sunset review, provide a countervailable subsidy, if the order is revoked or the investigation is terminated. Second, we have eliminated paragraph (d)(2)(iii)—which provided that an interested party is ''deemed'' to have waived participation in the sunset review by failing to file a complete substantive response to a notice of initiation. Thus, the Department will no longer make company-specific likelihood findings for companies that fail to file a statement of waiver and fail to file a substantive response to the notice of initiation. Finally, we modified paragraphs (d)(2)(iv)(C) and (e)(1)(ii)(B)(*3*)—which address waiver of participation by a foreign government in a CVD sunset review—to eliminate cross-references to paragraph (d)(2)(iii) and to eliminate certain language that might suggest the possibility that the Department's order-wide likelihood determination in a CVD sunset review would be based on assumptions about likelihood of continuation or recurrence of a countervailable subsidy. In sum, these three modifications to the waiver provisions of the Department's sunset regulations ensure that there is no longer the possibility that the Department's order-wide likelihood determinations might be based on assumptions about likelihood of continuation or recurrence of dumping or a countervailable subsidy. The Department will make its order-wide likelihood determinations on the basis of the facts and information available on the record of the sunset review.

Two commenters argue that amendment or withdrawal of the statutory provision (section 751(c)(4)(B) of the Act) found to be WTO-inconsistent was required in order to implement the AB/panel findings. We disagree. By modifying its regulatory waiver provisions, the Department has eliminated the possibility that its order-wide likelihood determinations would be based on assumptions about

likelihood of continuation or recurrence of dumping or a countervailable subsidy due to interested parties' waiver of participation in sunset reviews. Section 751(c)(4)(B) of the Act only mandates an affirmative company-specific likelihood finding *as a consequence of* a party electing to waive its participation in the sunset review. Thus, the modified regulatory waiver requirements result in elimination of any assumptions about likelihood because a party waiving participation would have already indicated to the Department that it was likely to dump or benefit from a countervailable subsidy if the order were revoked.

Two commenters also noted that the regulations would not longer specify how the Department will address the situation where a producer/exporter does not participate in a sunset review. The commenters are correct in part. While it is the statute that provides for determinations on the basis of facts available where, *inter alia*, a party does not provide requested information (section 776 of the Act), there are specific provisions in the Department's regulations concerning use of facts available in a sunset review (19 CFR 351.308(f)). As a general matter, the Department will make its order-wide likelihood determination on the basis of the facts and information available on the record of the sunset review which may include, where appropriate, use of facts available as provided for in the statute and regulations.

Section 351.309

The Appellate Body upheld the panel's finding that the operation of paragraph (d)(2)(iii) of 19 CFR 351.218 was inconsistent with Article 6.2 in that it allegedly denies an interested party that is deemed to have waived its right to participate in a sunset review by submitting an incomplete substantive response the right to participate in a hearing. Paragraph (d)(2)(iii) does not explicitly address the issue of hearings; nor do the regulations preclude hearings in expedited sunset reviews resulting from the application of the waiver provisions. Nevertheless, in the interest of alleviating any perceived confusion with respect to participation in a hearing in an expedited sunset review, the Department is modifying paragraph (c)(1)(iii) of 19 CFR 351.309 to clarify that the Secretary will specify a due date for case briefs in an expedited sunset review. Case briefs provide the basis for parties' affirmative presentations at a hearing. In addition, as discussed above, for other reasons we have eliminated paragraph (d)(2)(iii) in its entirety.

One commenter argued that providing for filing of case briefs in expedited reviews could eliminate the distinction between expedited and full sunset reviews. The commenter proposed, instead, that the regulations provide respondents with an opportunity to supplement their substantive responses to correct identified deficiencies. We have not adopted this suggestion. The central distinction between an expedited and full sunset review remains. In a full sunset review, the regulations provide that the Department will issue a preliminary determination and allow comments on that determination; there is no provision for issuance of a preliminary determination in an expedited sunset review. Clarifying the basis for parties' participation in a public hearing in an expedited sunset review does not change this distinction. The commenter also suggested that if the Department permits the filing of case briefs in an expedited review, it should make a corresponding amendment to paragraph (e)(1)(ii)(C)(*2*) of 19 CFR 351.218. We agree and have eliminated certain language in paragraph (e)(1)(ii)(C)(*2*) that could be construed as inconsistent with permitting parties to file case briefs in expedited sunset reviews.

Classification

E.O. 12866

This final rule has been determined to be not significant under E.O. 12866.

Administrative Procedures Act

The Department finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3) in order to complete requirements mandated by the World Trade Organization (''WTO'') Appellate Body by December 17, 2005. On December 17, 2004, the WTO Appellate Body (''AB'') issued its findings regarding the sunset review of the antidumping duty order on Oil Country Tubular Goods (''OCTG'') from Argentina. The WTO-appointed arbitrator determined, with reference to the Appellate Body report, that the United States must bring its laws into compliance with the Antidumping Agreement and complete another sunset review of the antidumping duty order on OCTG from Argentina not later than December 17, 2005. The Department was informed of this deadline date on June 7, 2005. On August 15, 2005 (70 FR 47738), the Department published a proposed rule to solicit comments on proposed revisions to its regulations related to sunset reviews. In addition, the Department initiated consultations for 60 days with the relevant congressional committees in accordance with section 123 of the Uruguay Round Agreements Act. After the publication of this final rule, the Department still must initiate the sunset review, provide interested parties with 30 days to submit their responses to the Department's sunset questionnaire, analyze the responses, and make a final likelihood determination in the sunset review before December 17, 2005. Thus, in order to meet the WTO-mandated implementation date and to ensure that interested parties have an opportunity to participate fully in the sunset review, the Department finds good cause to waive the 30-day delay in effectiveness of the final rule and makes these regulations effective on October 31, 2005, upon conclusion of the 60-day congressional consultation period required by the Uruguay Round Agreements Act.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for a failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule involves collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The requirements have been approved by OMB under control numbers 0625–0105 and 0625–0148.

E.O. 12612

This final rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations,

Reporting and recordkeeping requirements.

Dated: October 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

■ For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart B—Antidumping and Countervailing Duty Procedures

■ 1. Section 351.218 is amended by revising paragraphs (d)(2)(ii) introductory text, (d)(2)(iv)(C), (e)(1)(ii)(B) introductory text, (e)(1)(ii)(B)(*3*), and (e)(1)(ii)(C)(*2*), and removing and reserving paragraph (d)(2)(iii), as follows:

§ 351.218 Sunset reviews under section 751(c) of the Act.

* * * * *

(d) * * *

(2) * * *

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; in the case of a foreign government in a CVD sunset review, a statement that the government is likely to provide a countervailable subsidy if the order is revoked or the investigation is terminated; and the following information:

* * * * *

(iv) * * *

(C) Base the final results of review on the facts available in accordance with 351.308(f).

* * * * *

(e) *Conduct of sunset review*—(1) * * *

(ii) * * *

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will: * * *

(*3*) Base the final results of review on the facts available in accordance with 351.308(f).

(C) * * *

(*2*) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation, issue final results of review based on the facts available in accordance with § 351.308(f) (see section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

* * * * *

Subpart C—Information and Argument

■ 2. Section 351.309 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 351.309 Written argument.

* * * * *

(c) *Case brief.* (1) * * *

(iii) For the final results of an expedited sunset review, expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

* * * * *

[FR Doc. 05–21468 Filed 10–28–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–127]

RIN 1625–AA–09

Drawbridge Operation Regulations; Shark River (South Channel), NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 71 Bridge, at mile 0.8, across Shark River (South Channel), at Belmar, New Jersey. This deviation allows the drawbridge to provide vessel openings upon two hours advance notice each day from 8 a.m. to 3 p.m. and from 6 p.m. to 10 p.m. beginning on Monday, October 31 until Thursday, November 3, 2005, to facilitate emergency mechanical repairs.

DATES: The deviation is effective from 8 a.m. to 3 a.m. and from 6 p.m. to 10 p.m. from October 31 until November 3, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Route 71 Bridge, at mile 0.8 across Shark River (South Channel), a bascule-type drawbridge, has a vertical clearance in the closed position to vessels of 13 feet, at mean high water.

The New Jersey Department of Transportation, the bridge owner, requested a temporary deviation from the operating regulations for the Route 71 Bridge, set out in 33 CFR 117.751, to effect emergency repair and replacement of the span lock motor and gear box of the draw span.

To facilitate the work, the Route 71 Bridge will provide vessel openings of the draw span upon two hours advance notice each day from 8 a.m. to 3 p.m. and from 6 p.m. to 10 p.m. beginning on Monday, October 31, 2005 until and including Thursday, November 3, 2005. At all other times, the bridge will operate in accordance with 33 CFR 117.751.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 20, 2005.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05–21501 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–3121–F]

RIN 0938–AM55

Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: In this rule, we finalize provisions specified in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) that establish new data collection, posting, and recordkeeping requirements for skilled nursing facilities (SNFs) and nursing facilities (NFs). It requires that on a daily basis for each shift, SNFs and NFs must post nurse staffing data for the licensed and unlicensed staff directly responsible for resident care in the facility. Facility census information must also be posted. This final rule is also part of a broader communication outreach initiative by CMS to provide beneficiaries, their families, and the public with access to updated data and other information that can assist them in making healthcare decisions.

DATES: The provisions of this final rule are effective on December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Anita Panicker, (410) 786–5646, or Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Medicare and Medicaid-participating nursing homes are regulated by sections 1819 and 1919 of the Social Security Act (the Act), added by Title IV, subtitle C of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203, December 22, 1987).

On February 27, 2004 we published a proposed rule in the **Federal Register** entitled ''Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information'' (69 FR 9282). In the proposed rule, we presented our proposal to implement section 941 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) by establishing a new data collection and recordkeeping requirement for SNFs and NFs. Section 941 of BIPA, which was effective January 1, 2003, requires SNFs and NFs to post daily, for each shift, the number of licensed and unlicensed nursing staff directly responsible for resident care in the facility, and it requires the information to be displayed clearly in a visible place. Additionally, section 941 of BIPA requires the Secretary of Health and Human Services (the Secretary) to specify a ''uniform manner'' for display of this information.

In the February 27, 2004 proposed rule, we proposed that SNFs and NFs be required to: (1) On a daily basis, use a CMS-specified form at the end of each shift to indicate the number of full-time equivalents (FTEs) of registered nurses, licensed practical nurses, licensed vocational nurses, and certified nurse aides (CNAs) directly responsible for resident care; (2) verify or determine the resident census on a daily basis, (3) post the completed form in a prominent place readily accessible to residents and visitors; (4) make the form available to the public upon request; and (5) maintain the forms for a minimum of 3 years or as required by State law, whichever is greater. The requirements in this final rule were revised based on the comments we received on the proposed rule.

To date, we have also taken the following actions to educate providers and clarify the requirements to implement section 941 of BIPA:

- An October 10, 2002 letter to State Agency Directors, which can be found at *http://www.cms.hhs.gov/medicaid/survey-cert/SC0303.pdf*.
- Presentation of information at a national nursing home conference.
- Publication of a notice on an electronic bulletin board used by nursing homes.
- A December 24, 2002 letter to nursing homes, which can be found at *http://www.cms.hhs.gov/medicaid/bipa/bipanh.asp*.

II. Ongoing Research on Nursing Home Quality Improvement

In November 2001, the Secretary announced an initiative to focus on efforts to address quality of care improvement for nursing homes. The Nursing Home Quality Initiative, implemented nationwide in November 2002, represents a broad-based program that includes our continuing regulatory and enforcement systems, new and improved consumer information, community-based nursing home quality improvement programs and partnerships, and collaborative efforts to promote quality awareness and improvement.

Working with quality measurement experts, the National Quality Forum and a diverse group of nursing home industry stakeholders, we adopted a set of nursing home quality measures. The Nursing Home Quality Initiative combines new information for consumers about the quality of care provided in individual nursing homes with current resources available to nursing homes to improve the quality of care in their facilities data for comparison, deficiency survey results and staffing information about the nation's Medicare and Medicaid-certified nursing homes through the Nursing Home Compare Web site, which is updated quarterly.

The main components of the initiative are nursing home quality measures derived from resident assessment data. This information is routinely collected by nursing homes at specified intervals during a resident's stay (using the Minimum Data Set or MDS). These measures provide additional information to help consumers make informed decisions about nursing home care options. Publication of the measures is intended to motivate nursing homes to improve care delivery and encourage discussions about quality between consumers and clinicians.

Additional CMS-sponsored quality improvement information may be found in the ''Nursing Home Compare'' section of our Web site at *http://www.medicare.gov*. The primary purpose of Nursing Home Compare is to provide detailed information about the past performance of every Medicare- and Medicaid-certified nursing home in the country. Nursing Home Compare contains the following sections of detailed information:

- *About the Nursing Home:* including the number of beds and type of ownership.
- *Quality Measures:* including the percentage of residents with pressure (bed) sores, percentage of residents with physical restraints, and more.
- *Inspection Result Information:* including health and safety deficiencies found during the most recent State nursing home survey and from recent complaint investigations.
- *Nursing Home Staff Information:* including the average number of hours worked by registered nurses, licensed practical or vocational nurses, and certified nurse aides per resident per day.

Each nursing home is required to report nursing staff totals to its State survey agency during the annual survey. We receive this information from the State survey agencies and convert the nursing staff hours reported into the

number of staff hours per resident per day. We report the total nursing staff hours per resident per day, as well as the total nursing staff hours per resident per day for registered nurses, licensed practical nurses, and licensed vocational nurses. (Facility staffing measures reflected in Nursing Home Compare may be updated or revised in the future.)

NFs are required to have adequate staff to give appropriate care to all residents. SNFs and NFs must have at least one registered nurse for at least 8 consecutive hours per day, 7 days per week, and either a registered nurse, licensed practical nurse or licensed vocational nurse, and other nursing personnel on duty 24 hours per day, unless a waiver has been granted in accordance with § 483.30(c) or § 483.30(d). Certain States may have more stringent nurse staffing specifications than the Federal requirements.

Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508, November 5, 1990) required the Secretary to report the results of a study to the Congress on the appropriateness of establishing minimum caregiver-to-resident and supervisor-to-nurse ratios for Medicare- and Medicaid-certified nursing homes. The purpose of the study was to examine the analytic justification for establishing minimum nurse staffing ratios for nursing homes. The study, entitled ''Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes,'' (Report to Congress, July 2000) was conducted in two phases. Phase I of the study *http://www.cms.hhs.gov/Medicaid/reports/rp700hmp.asp*) examined whether an association exists between staffing levels in nursing homes and quality of care. Phase II of the study (*http://www.cms.hhs.gov/medicaid/reports/rp1201home.asp*) examined the cost and benefits associated with establishing staffing minimums and expanding the data used in the multivariate analysis from three States to a more representative national sample. It included an exploration of more refined case mix classification methods and case studies to validate Phase I findings, while examining related issues affecting certified nurse aide recruitment and retention. In both Phase I and Phase II studies, the phrase ''nurse staffing'' referenced all three categories of nurses and nurse aides: registered nurses, licensed practical nurses, and nurse aides. Based upon these studies, we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements. Abt Associates and CMS staff have completed a draft report with options for: (1) Collecting more accurate staffing data; (2) auditing the data collected; (3) transmitting the data; and (4) configuring the data so that they can be informative to the public when placed on our website.

Consistent with our November 2002 initiative to disseminate reliable information on nursing home quality for Medicare and Medicaid beneficiaries, our objective in finalizing the February 27, 2004, proposed rule is to make staffing information available to the public to assist them in making informed decisions when choosing health care providers. This regulation provides consumers with staffing information on a day-to-day basis.

III. Provisions of the February 27, 2004 Proposed Rule

On February 27, 2004, we published a proposed rule in the **Federal Register** entitled ''Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information'' (69 FR 9282). Below we summarize and discuss the proposed changes to the general conditions and requirements in § 483.30, Nursing services.

We proposed to revise § 483.30 by adding a new paragraph (e) that would require nursing homes to post nurse-staffing information in accordance with section 941 of BIPA, specified as sections 1819(b)(8) and 1919(b)(8) of the Act. We proposed daily collection requirements for staffing information, identified categories of staff for which the provision would apply, and established record keeping specifications, that is, a specific form SNFs and NFs would use to display staffing information by shift. We also proposed requiring SNFs and NFs to make this information available to the public upon request and maintain the forms for 3 years or as required by State law, whichever is greater.

In the February 27, 2004 proposed rule, we also noted that neither section 1819(b)(8) nor section 1919(b)(8) of the Act specifies what constitutes ''licensed and unlicensed nursing staff.'' In the proposed rule, we interpreted ''licensed and unlicensed nursing staff'' to mean registered nurses, licensed practical nurses or licensed vocational nurses (as the term(s) are defined under State law), and certified nurse aides.

We also proposed to revise § 483.30 by adding a requirement that SNFs and NFs collect and display the resident census for each day. While collection of resident census information is not specifically required under section 941 of BIPA, we believe that collection of this information is authorized under our general statutory authority as defined in sections 1819(f)(1) and 1919(f)(1) of the Act. These sections require the Secretary to ''assure that requirements which govern the provision of care [in both SNFs and NFs] * * * and the enforcement of those requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.'' We believe the addition of census information makes the nurse staffing data more meaningful and useful to the public and is in line with our rulemaking authority. Providing resident census data along with nurse staffing data gives consumers a context and information they can use to interpret the data and reach conclusions regarding the nurse staffing levels in relation to the resident population.

We proposed to add a new § 483.30(e)(1) that would specify the contents and format of the information in accordance with the statutory authority provided by BIPA, which mandates that the information must be ''displayed in a uniform manner.'' Proposed § 483.30(e)(1) through § 483.30(e)(3) would require that the nurse staffing and census information:

- Include current nurse staffing numbers calculated as full time equivalents (FTEs) for each shift;
- Include the daily resident census;
- Be posted on the CMS Daily Nurse Staffing Form; and
- Be displayed in a prominent place readily accessible to residents and visitors.

IV. Analysis of and Responses to Public Comments Received on the February 27, 2004 Proposed Rule

We received a total of 82 timely items of correspondence from individuals, providers, national and regional health care professional associations and advocacy groups, State and local health organizations, labor unions, health care law firms, and others. Summaries of the public comments received and our responses to those comments are set forth below under the appropriate subject headings. The first section, ''Information Requirements,'' includes comments and responses that primarily relate to the proposed requirements in § 483.30(e)(1), that is, the proposed requirement to calculate full time equivalents (FTEs) for nursing staff and the proposed requirement to determine or verify resident census. The second section, ''Form Use and Posting Requirements,'' contains comments and responses regarding the requirements in § 483.30(e)(2), that is, the proposed

CMS-specified form and the proposed requirements for displaying the form. The third section, ''Public Access and Data Retention Requirements,'' includes comments and responses regarding the proposed requirements in § 483.30(e)(3) for maintaining data and making them publicly available. The fourth section, ''General Comments'' includes comments about the preamble discussion and other issues that fall outside the specified requirements of the February 27, 2004, proposed rule.

A. Information Requirements, Proposed § 483.30(e)(1)

In § 483.30(e)(1), we proposed requiring that SNFs and NFs on a daily basis, at the end of each shift, calculate the number of full time equivalents (FTEs) for the following licensed and unlicensed nursing staff directly responsible for resident care: (A) Registered nurses (RN); (B) Licensed practical nurses (LPN) or licensed vocational nurses(LVN) (as defined under State law); and (C) Certified nurse aides. In addition we proposed requiring SNFs and NFs to determine or verify the resident census on a daily basis.

1. Using Full Time Equivalents (FTEs)

Comment: A number of commenters voiced their disagreement with the proposal to require facilities to post staffing data according to FTEs. Commenters stated that the requirement ''goes beyond the law'' and pointed out that section 941 of BIPA requires only that nursing facilities post the number of licensed and unlicensed staff for each shift every day. In addition, commenters pointed out that in our December 24, 2002 memorandum sent to nursing facilities, we gave facilities discretion with respect to how the nurse staffing and census data are to be displayed, provided that the required information is displayed in a uniform manner in a clearly visible place.

Commenters further indicated that the use of FTEs may make it difficult for families and the public to understand, and staff time will be wasted explaining FTEs to visitors.

Response: We agree with the commenters that displaying nurse staffing totals using FTEs could be confusing and may not accurately represent the number of staff providing care during a given time period. For example, 1 LPN FTE during an 8-hour (3 p.m. to 11 p.m.) shift could mean that 1 LPN worked the entire 8-hour shift. However, it could also mean that 2 LPNs worked 4 hours each from 3 p.m. to 7 p.m. and that no LPNs worked in the unit from 7 p.m. to 11 p.m. Clearly, displaying FTEs does not provide sufficient information to determine the number of staff present at a given point in time, which is important for families and visitors to know.

Therefore, instead of requiring facilities to post FTEs, in this final rule we are requiring facilities to post the number of nursing staff by category (RN, LPN or LVN, and CNA) providing direct care to residents during each shift and the actual hours worked by the staff during each shift (for example 7 p.m. to 11 p.m.). More specific information about the required data and the method for displaying the data are presented later in this preamble.

2. Suggestions for Additional Data

Comment: A few commenters stated that staffing level data would not be helpful to the public unless information about resident acuity was included. One commenter indicated that without consideration of the acuity of the residents the posting of staffing will be meaningless.

Response: We agree that it would be valuable to have the acuity information posted along with the staffing data. However, there are wide variations in the types of populations served in SNFs and NFs. In addition, there are no accepted standardized measures of resident acuity that can be applied across all facilities. Therefore, in this final rule, we are not requiring facilities to post resident acuity level data.

Comment: One commenter stated that instead of posting the number of staff, the facility should post the number of hours of training and the type of training the staff receives.

Response: We appreciate the comment, but requiring the posting of information about staff training is not within the scope of this regulation, which is to develop requirements for implementation and codification of the requirements of section 941 of BIPA, which requires the posting of specific nurse staffing information. We would point out that requiring facilities to identify the number of each category of nursing staff (that is RN, LPN, LVN and CNA) provides the public with some degree of knowledge about their education and training.

Comment: Many commenters stated that nurse staffing data are not sufficient to inform families and the public about the quality of care in a facility.

Response: While we are in agreement with commenters who noted that the provision of nurse staffing data alone is insufficient to evaluate quality of care within a facility, we are currently conducting a wide range of regulatory and research activities focused on nursing home quality assessment and improvement. For example, at our Nursing Home Compare website, we present quality measures, deficiency information, and other basic information about facility performance. We also encourage consumers to visit facilities.

Nurse staffing information is critical data to help consumers make informed decisions when selecting a facility. Census information provides a basis for consumers to understand the relative number of nursing staff providing direct care to all of the residents during each shift. We believe that implementing the nurse staffing requirements in section 941 of BIPA, as well as establishing a requirement for collecting and posting census data offers the public access to updated data and other information that can assist them in making healthcare decisions.

Comment: Some commenters stated they would like the nurse staffing form to include all the staff working on a particular shift, including medical records reviewers, MDS coordinators, directors of nursing, persons conducting interdisciplinary team meetings, and others who work with residents at some level.

Response: Activities such as data collecting, conducting and coordinating meetings, and reviewing records are outside the scope of BIPA requirements. However, facilities may choose to provide that information separately as part of the same documentation that is used to display nurse-staffing data. Therefore, in this final rule, facilities have been given discretion with respect to the manner in which the nurse staffing and census data are displayed, provided that the required information is displayed in a uniform manner in a clearly visible place.

Comment: One commenter suggested that we require staff-to-resident ratios on the form.

Response: As we stated in the preamble of the February 27, 2004 proposed rule, we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements. In addition, the level of care needed and the resident acuity level varies from facility to facility, which limits the utility of those data. However, a facility is not prevented from posting that information should they choose to do so. Therefore, in this final rule facilities have been given discretion with respect to the manner in which the nurse staffing and census data are displayed, provided that the required information is displayed in a uniform manner in a clearly visible place.

Comment: Some commenters stated the forms should include the names of each staff member at work during the shift.

Response: We appreciate the comment but do not believe that facilities should be required to post names of staff. Such a requirement would increase the paperwork and recordkeeeping burden on SNFs and NFs without serving the purpose of making staff level information available. We believe collecting and updating staff data would be more time consuming. In this final rule, facilities have been given discretion to create their own document that may include more information than the mandated data.

Comment: Some commenters stated that the nurse staffing form should include the name and signature of the person who completes it, so that the public knows to whom questions should be directed.

Response: Facilities may wish to include contact information for someone who can answer questions. (This is likely to be the nursing supervisor on each shift, not necessarily the person who completed the information that is posted.) Facilities certainly may post information that is not required under this final rule. However, in this final rule, to minimize the burden of these requirements, we are not specifically requiring that facilities include that information.

3. Impact of the Requirements on Facilities

Comment: Many commenters expressed their concern that the process of collecting and posting of data will take nursing staff away from resident care.

Response: We appreciate the commenters' concerns. However, this final rule does not require that nursing staff complete and update this information, and we do not expect that preparing and posting the information will take much time. Clerical staff should be able to prepare and post the data quickly. Therefore, we are not requiring specific personnel to collect, verify, or post the data that have to be displayed daily.

4. Clarification of Terms

Comment: Some commenters were not sure how to determine which nursing staff should be included under section 941 of BIPA. They asked for clarification of the meaning of ''directly responsible for resident care.''

Response: In this final rule, we clarify the term ''directly responsible for resident care'' to mean that an individual is providing direct care to residents or is directly responsible for care provided to residents. Providing direct care means that an individual has responsibility for the residents' total care or some aspect of the residents' care. Resident contact is an intrinsic part of direct care. ''Directly responsible for resident care'' includes, but is not limited to, such activities as assisting with activities of daily living (ADLs), performing gastro-intestinal feeds, giving medications, supervising the care given by CNAs, and performing nursing assessments to admit residents or notify physicians about a change in condition.

For example, when an RN is assigned to submit MDS data to a State agency for the day, that RN would not be regarded as providing direct care. However, if the same RN is assigned to the unit for providing resident care, then the hours worked by the RN in the unit would be included in the posted data. Therefore, in this final rule, we require only the data related to the number of direct care staff on each shift be posted.

5. Survey Issues

Comment: Many commenters stated that this data collection is a redundant process as the facilities already collect and report those data to surveyors.

Response: We are aware that facilities are required to provide information, including the actual number of direct care staff and direct care hours worked to us. Therefore, this final rule codifies section 941 of BIPA, which specifically requires the posting of nurse staffing information. The purpose of this final regulation is to make the data available to the public on a daily basis. Facilities should be able to reduce the burden by providing surveyors with the staffing level data they collect and post every day for families and the public. This would eliminate the need to collect the data twice.

Comment: Many commenters stated that CMS needs an enforcement mechanism to ensure accuracy of the data. Some commenters suggested that the data be transmitted to CMS for validation and others stated that surveyors must validate it. Other commenters stated that the validation is much more reliable when family members or others who are in the facility visiting at a particular time check the validity of the posted data, as they can verify the number of staff working at a given time.

Response: As we discussed in the preamble of the February 27, 2004 proposed rule, we would expect facilities to retain this information in order to be able to produce it if requested by a State Agency, the public, or CMS. While surveyors are aware of the nurse staff posting requirements and can check for compliance at any time and report their findings to us, we do not currently require them to do so. (We are currently working to update nursing home survey requirements and revise the State Operations Manual (SOM) to provide additional guidance for surveyors and facilities.) Sending the information to us would not serve the purpose of validating the accuracy of the displayed information. Family members, ombudsmen, and others visiting the facilities will be able to verify the accuracy of the data posted, as they can check the number of nursing staff in realtime.

6. Resident Census Data

We proposed at § 483.30(e)(1)(ii) that SNFs and NFs determine or verify the resident census on a daily basis. Forty percent of the comments we received included a comment about posting of census data.

Comment: Many commenters supported the presentation of the census data on the staffing form.

Response: We appreciate your comments and agree that providing resident census data gives families and residents a frame of reference by which they can view the nurse-staffing level data. The number of nursing staff alone, without the census data, may not be meaningful. Census information provides a basis for inferring the number of nursing hours available to residents. In this final rule, we require that census data be posted daily.

Comment: Some commenters did not support the posting of census data and stated that it is of little value if staffing ratio or acuity of the resident population is not captured.

Response: Although we do not require that resident acuity level be posted, we believe it is important for consumers to have information about the number of residents in the facility to provide a context for understanding of the nurse-staffing data. Facilities that have been posting nurse staffing information since BIPA was implemented report that posting staff data has helped them, as it has addressed families' questions regarding the number of staff working at a given time. Acuity levels across facilities vary tremendously, and currently there are no generally accepted standard measures. Additionally, requiring the posting of this information is beyond this scope of the statute. Therefore, in this final rule, we require census data to be posted daily.

B. Form Use and Posting Requirements, Proposed § 483.30(e)(2)

We proposed at § 483.30(e)(2)(i) to require SNFs and NFs to use a CMS-specified form (Daily Nurse Staffing Form) to enter the information specified in paragraph (e)(1) of this section, and we proposed at § 483.30(e)(2)(ii) to require that the completed Daily Nurse Staffing Form be posted in a prominent place readily accessible to residents and visitors.

Approximately 90 percent of commenters had comments concerning the proposed requirement for use of the CMS-specified form; about 30 percent of commenters had comments about where the form should be posted.

1. CMS-Specified Form

Comment: Many commenters expressed concerns that the CMS-specified form does not meet their facility's staffing patterns, and that the calculations would be very burdensome if a facility does not use standard 8-hour shifts or has overlapping shifts. Commenters stated that the nursing shortage has caused them to use 2-hour shifts and 4-hour shifts to help meet the needs of their residents. Others stated that nurses may work 12 hours just on a weekend to cover the shortage in a facility. Commenters stated that alternate staffing patterns cannot be captured on the proposed CMS-specified form. Some commenters also stated that requiring the use of a CMS-specified form does not conform to the information in the December 24, 2003 CMS State agency directors' letter.

Response: After reviewing the comments on the proposed mandatory form, we reviewed the issues raised by the commenters and found that many facilities have non-standard or overlapping shifts. For example 1 unit within a facility may have 1 RN working 7 a.m. to 7 p.m., 1 LPN working 7 a.m. to 3 p.m., 1 LPN working 8 a.m. to 4 p.m., 2 CNAs working 6 a.m. to 2 p.m., 4 CNAs working 7 a.m. to 3 p.m., and 2 CNAs working 7 a.m. through 7 p.m. Overlapping shifts ensure that a unit has sufficient staffing available during the busiest times of the day, for example, giving medications, preparing end stage renal disease (ESRD) patients to be transported for dialysis, or assisting residents at mealtimes. To address these varied staffing patterns, many facilities have developed their own forms to display nurse staffing data and have found their own forms to be useful and informative.

Therefore, we have concluded that facilities should have the flexibility to develop their own documents for displaying the required information. Note that in the context of this final rule, we are using the term ''document'' to refer to the medium a facility may use to display nurse staffing information. The ''document'' may be a form or a spreadsheet, as long as all the required information is displayed in a clearly visible place. Further, the information on the document should be displayed in a uniform manner and presented in a clear and readable format. If requested, hard copies of the document must be made available to families and the public, as specified in § 483.30(e)(3)(i) of the proposed rule and § 483.30(e)(3) of this final rule.

The following is an example of one method for displaying nurse staffing information, using the information for one shift in a 24-hour period.

Name of the Facility:

Sample Nursing Home

Date: January 24, 2005

RESIDENT CENSUS AT THE START OF THE SHIFT: 88

Shift	Category of staff		Actual hours worked	Staffing total
7 a.m.–3 p.m.	Licensed	RN	1 RN 7 a.m.–3 p.m. 2 RN 7 a.m.–11 a.m. 1 RN 11 a.m.–3 p.m.	2.5 RNs.
		LPN/LVN	2 LPN 7 a.m.–3 p.m.	2 LPNs.
	Non-Licensed	CNA	5 CNA 7 a.m.–3 p.m.	5 CNAs.
3 p.m.–11 p.m.				

2. Time Frame for Posting Information

Comment: Several commenters strongly opposed the proposal to delay calculating and posting nurse staffing data until the end of the shift. Commenters stated that data posted at the end of a shift are not of any use to resident families since it is after the fact. Some commenters pointed out that CMS agreed to the form being posted closer to the beginning of the shift in the December 24, 2003 State Agency Directors' letter.

Response: We agree that it is preferable for families and visitors to have the opportunity to view nurse-staffing data that reflects the staffing level at the time they are visiting the facility. Therefore, in this final rule, we are requiring facilities to post the information at the beginning of the shift. If any changes to the information posted are needed, they must be made as soon as possible.

Comment: Some commenters stated that the staffing sheet should show the staffing levels for the entire day, not just for one shift at a time.

Response: We agree families may be interested in knowing the staffing levels for the entire 24-period, rather than staffing levels for a single shift. However, it is also important to have accurate and updated information posted each shift. If families are interested in staffing levels for other shifts, they can ask to see data from those shifts.

Comment: One commenter expressed concern regarding identifying the first shift of the day. The commenter pointed out that a day starts after midnight; therefore, the night shift would be the first shift.

Response: Standard practice in most facilities is to consider the start of the day as the morning shift. However, there are variations in shifts among facilities. Some have night shifts starting at 10 p.m.; some at 11 p.m.; and some at 12 midnight. Additionally, the length of shifts vary among facilities. Some have 12-hour shifts and others 8-hour or even 4-hour shifts. While we are requiring uniformity in the displaying of the nurse-staffing level data for each shift, we are providing facilities with the flexibility to identify the shift breakdowns so the 24-hour staffing coverage can be determined in an accurate manner.

Comment: Many commenters stated that we should require that the staffing form be posted within 1 hour of the start of the shift; others suggested 2 hours.

Response: Although we are requiring that facilities post nurse staffing data at the beginning of the facility-specified shift, we do not believe it is necessary to dictate a particular time frame. Staffing levels may change unexpectedly, and we believe facilities should have the flexibility to ensure the

accuracy of the information before posting it.

Comment: Some commenters asked, ''which census should be recorded, the census at midnight or the average census for the day?''

Response: The facility must post the census at the beginning of each shift. For example, the 7am to 3pm shift would post the census at 7am and so forth. In most facilities, the census data can be obtained from the shift report that nursing supervisors give to the next shift.

3. Clarification of Terms

Comment: Some commenters stated that the term ''uniform manner'' needs to be clarified, referring to the requirement that the information must be displayed in a uniform manner.

Response: ''Uniform manner'' means that certain required information must be displayed on or in a document of the facility's choosing in a format that assures the information can be read and clearly understood by the reader. The required information includes: (1) The name of the facility; (2) the date, (3) the resident census; (4) each facility shift for a 24 hour period; and (5) the specific hours worked, per shift, aggregated by category (registered nurses, licensed practical nurses or licensed vocational nurses (as the term(s) are defined under State law), and certified nurse aides).

For example: Three RNs worked for 4 hours each during an 8-hour shift, which started at 7 a.m. and ended at 3 p.m. Two of the RNs worked from 7 a.m. to 11 p.m., and one RN worked from 11 a.m. to 3 p.m. The facility's posting would show the shift (7 a.m. to 3 p.m.), the specific work hours (2 RNs from 7 a.m. through 11 p.m., and 1 RN from 11 a.m. through 3 p.m.), and the total number of RNs on duty during the shift (1.5). Note that although 3 RNs worked for some part of the shift, the total number displayed would be 1.5 because each RN worked for only half the 8-hour shift. The total number of RNs would be 3 only if all 3 RNs worked for the entire 8-hour shift.

The data should be updated at the beginning of every shift to reflect actual hours worked by registered nurses, licensed practical nurses, and nurse aides during the facility-identified shift in question and the total hours worked. The document on which the information is displayed should be clear and readable to residents and visitors.

The facilities have discretion with respect to displaying the nurse staffing and census data provided the information is in a clearly visible place and contains the required data elements.

4. Location of Form

Comment: Some commenters stated that the daily nurse staffing form should be posted on each unit.

Response: The facilities can choose to post information on each unit. We require that the nurse staffing information be posted in a visible and easily accessible area that is common to visitors and residents. If a facility posts the information on each unit, for just that unit, we would still expect all nurse staffing information to be posted in a visible and easily accessible common area.

Comment: Many commenters voiced their support for the requirement that the information is to be posted in a prominent place readily accessible to residents and visitors.

Response: We appreciate the support and agree that it is important for visitors and residents to be able to locate the information. Therefore, in this final rule, we require that the data be displayed in a clear and readable manner and be posted in a prominent place that is readily accessible to residents and visitors.

5. Format and Instructions

Comment: Some commenters stated that CMS needs to mandate the size of the paper or the size of the font to ensure that the form is readable.

Response: We are requiring facilities to display the information in a clear and readable manner. Facilities are free to use the paper and font they choose, as long as the information is displayed in a manner that meets these requirements. We believe facilities should have the flexibility to determine how best to display the information so that it is clear and readable. Therefore, in this final rule, we require that the data be displayed in a clear and readable manner.

Comment: Some commenters wanted more precise instructions for completing the required nurse staffing data.

Response: As discussed earlier, after reviewing the comments on the feasibility of using a standardized form regarding variations in shifts and staffing patterns, we have concluded that facilities must have the flexibility to capture daily nurse staffing data. This final rule does not prevent facilities from providing additional data.

C. Public Access and Data Retention Requirements, Proposed § 483.30(e)(3)

We proposed public access and data retention requirements at § 483.30(e)(3). Forty percent of the commenters had a comment about the proposed access requirements at § 483.30(e)(3)(i) that would require SNFs and NFs to make the Daily Nurse Staffing Form(s) available to the public upon request. Sixty percent of the comments received included a comment about the proposed data retention requirements.

Comment: A few commenters agreed with the proposed requirement and suggested that facilities keep the forms in a notebook at the front desk so the public would have easy access to them. The commenters further stated that both oral and written requests to see the forms should be honored; records should be provided within 24 hours of the request; and records should be copied at costs not to exceed community photocopying standards and the actual cost of clerical time to copy the documents.

Response: Facilities have the flexibility to decide how to make the documents accessible to the public. In this final rule, we require that upon oral or written request, facilities must make the nurse staffing data available to the public for review. Furthermore, we require that facilities must provide, as requested, photocopies of the documents at a cost not to exceed the community standard.

This requirement is similar to the current requirements at 42 CFR 483.10(b)(2) that the resident or his or her legal representative has the right—(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and (ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standards, photocopies of their records or any portion of them upon request after a 2 working days advance notice to the facility.

We proposed that the Daily Nurse Staffing Form(s) be maintained for a minimum of 3 years, or as required by State law, whichever is greater. It is our expectation that a SNF or NF will retain this information in keeping with standard business practices and be able to produce it if requested by the State Agency or the public.

Comment: A few commenters agreed with the proposed requirement that the forms should be retained for 3 years or as required by State law, whichever is greater. However, many other commenters stated that a requirement to maintain records for 3 years would be burdensome, unnecessary, and costly in terms of wasted time, paper, storage space, and personnel. One commenter suggested reducing the requirement to 1 year or deleting it altogether. Another commenter suggested retaining the

records only until the next certification survey.

Response: We understand the commenters' concerns and have concluded that it is not beneficial for facilities to retain the nurse staffing records for 3 years. Therefore in this final rule, we are requiring facilities to retain nurse staffing data for only 18 months. Since nursing home surveys generally are conducted every 9 to 15 months, retaining the data for 18 months ensures their availability to surveyors. It also ensures that records are available for a reasonable period of time if residents or the public want to see them.

Comment: Some commenters stated that maintaining the nurse staffing data are redundant, since staffing schedules, pay roll, and other data typically maintained by facilities would provide the same information.

Response: We understand that facilities keep certain records that would contain the same information. However, this information is not maintained in a format that would enable families and the public to determine staffing levels across the facility on a given day or days. The data, as displayed, are different from the data acquired from payroll records, as payroll records contain only the hours each staff person worked in a given pay period, not whether the staff person provided direct care to residents or performed some other duty, such as coordinating MDS data. Furthermore, section 941 of BIPA mandates that facilities post nurse staffing information daily and make the posted information available to the public. Therefore, in this final rule, we require the facilities to post daily nurse staffing data for specified direct care nursing staff.

Comment: A commenter stated that the retention of records is not necessary since the information will not be submitted to an agency.

Response: The commenter is correct that we are not requiring data to be submitted to an agency; however, the statute requires the information be available to the public. Therefore, in this final rule, we require that nurse staffing data to be maintained for a minimum of 18 months which will also cover the annual survey period.

V. General Comments on the Proposed Rule

A number of commenters included discussions on topics related to nurse staffing, but not specifically proposed in the February 27, 2004 rule. The comments that follow were considered out of scope and as such were not part of our consideration in this final rule.

Comment: Several commenters stated that the BIPA requirements are helpful, although some commenters expressed concerns related to specific implementation requirements. One commenter reported that posting of the nurse staffing form in their facility for the past year has posed no problem at all. The commenter stated that it has even helped the facility resolve certain issues with family members.

Response: We appreciate the support; it is encouraging to know that facilities have been able to comply with our requirements and have found the display of the information to be helpful.

Comment: A few commenters wanted to know if these requirements apply to swing beds and hospitals.

Response: The requirements in this proposed rule apply only to nursing facilities, that is, SNFs and NFs.

Comment: One commenter stated that ''a better way would be to require a resident's family member or guardian to visit the resident a minimum of once per week to observe the care of the resident and report any concerns to the facility management or, if unresolved, to a liaison to the government.''

Response: Family members of residents are free to visit and observe the care given to the resident and report concerns to the facility, the State survey agency or the ombudsman. Requiring a resident's family member or guardian to visit the resident a minimum of once per week is beyond the scope of this final rule.

Comment: One commenter interpreted the preamble language that discusses the Nursing Home Quality Initiative as being a part of the proposed requirement. The commenter stated that the background information contradicts itself. The referenced section states, ''Although staffing is not an explicit part of this initiative * * *'' and ''Based upon these studies, at this time, we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements.''

Response: We would like to clarify that the ''initiative'' that is being discussed is the Nursing Home Quality Initiative and is not part of this final regulation. The preamble to the February 27, 2004 proposed rule states that we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements based on the study discussed. In our discussion of the value of the data required by this regulation, for example we noted, ''Consistent with our November 2002 initiative to disseminate and publish reliable information on nursing home quality for Medicare and Medicaid beneficiaries, our objective is to make staffing information available to the public to assist them in making informed decisions when choosing health care providers.''

Comment: One commenter stated that requiring a nursing home to post the FTE and census data does not ensure nurse staffing levels will increase due to the market demand created by an informed public.

Response: We agree with the comment. Clearly, providing information to consumers about nurse staffing levels will not be sufficient to increase staffing levels. However, the intent of the requirements in this rule is to make staffing information available to residents and visitors at any given time.

1. Staffing Ratios

Comment: A few commenters stated that they were not in agreement with the contention that the Minimum Staffing Ratios in Nursing Home Phase I and Phase II fail to provide sufficient evidence to warrant minimum staffing ratio requirements.

Response: We appreciate the comments. However, we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements. There exists a great variation in the population served in nursing facilities, not just in the acuity level but also in the experience and credentials of staff. Additionally, requiring a specific nurse-to-resident ratio is beyond the scope of this final rule.

Comment: Some commenters urged CMS to release Abt Associates' recommendations to the public as soon as they are made so that the facilities can implement them in a timely manner.

Response: We appreciate the comments and will share them with our staff overseeing the Abt Associate study. The study is mentioned in the preamble of this final rule as it is related to staffing, but it is not directly related to these requirements as this rule codifies the BIPA 941 requirements.

Comment: Some commenters suggested that it would be a good idea to use the data in the Online Survey Certification and Reporting (OSCAR), which is derived from the 671 Form that the State survey agency uses when conducting facility surveys.

Response: We agree that the data can be used on the 671 Form. The facilities have the flexibility to use the data to reduce the burden of collection when the same data are to be used in other documents or reports. However, this rule is focused on codifying the BIPA 941 requirements.

VI. Provisions of the Final Rule

Section 483.30(e)(1) Information Requirements

This final rule requires SNFs and NFs to post, for each shift, on a daily basis the actual hours of and total number of hours worked by, licensed and unlicensed nursing staff who are directly responsible for resident care on each shift in the facility. In the February 27, 2004 proposed rule, we noted that neither section 1819(b)(8) of the Act nor section 1919(b)(8) of the Act specifies what constitutes licensed and unlicensed nursing staff. In this final rule, we interpret the term ''licensed nursing staff'' to mean registered nurses (RNs); licensed practical nurses (LPNs) or licensed vocational nurses (LVNs), and ''unlicensed nursing staff'' to mean certified nurse aides (CNAs), as defined under State law.

As discussed in section IV of the preamble of this final rule, we use the term ''directly responsible for resident care'' to mean that an individual is providing direct care to residents or is supervising those who provide direct care to residents and has the responsibility for residents' total care or some aspect of residents' care. Resident contact is the intrinsic part of direct care. ''Directly responsible for resident care'' includes, but is not limited to, those activities as assisting with activities of daily living (ADLs), performing gastro-intestinal feeds, giving medications, supervising the care given by CNAs, and performing nursing assessments to admit residents or notifying physicians about a change in condition.

Therefore, in this final rule, we require only nursing staff assigned and responsible for direct resident care under the categories of RN, LPN/LVN and CNA to be captured in the daily nurse staffing data. This final rule does not require data collection on other staff, volunteers, or feeding assistants. This final rule provides the flexibility to facilities to post more data if they choose to do so to fit the individual facility needs.

In addition, SNFs and NFs must post the resident facility census and update the data as needed.

Section 483.30(e)(1) Required Data Elements

On a daily basis, at the beginning of the shift, NFs and SNFs must post the following data:

1. Facility Name
2. Current Date
3. Resident Census
4. Facility-specific shifts for the 24-hour period, (for example 7 a.m. through 3 p.m., 3 p.m. through 11 p.m., and 11 p.m. to 7 a.m.).
5. Categories of nursing staff employed or contracted by the facility, per shift.
6. Actual time worked for the specified categories of nursing staff, including split shifts.
7. Number of nursing staff working per shift

Section 483.30(e)(2) Posting Requirements

In the February 27, 2004 proposed rule, we proposed that SNFs and NFs post, on a CMS-specified form, information on a daily basis that includes the date, the name of the facility, the total number of licensed and unlicensed nursing staff who are directly responsible for resident care and the specific hours they work. However, in this final rule, we deleted the required use of a CMS-specific form. Nurse staffing data must be displayed in a clear and readable format and be posted in a prominent place readily accessible to residents and visitors. However, we are not mandating a specific form be used, and we are providing facilities the flexibility to use the form or format which best meets their needs.

We proposed requiring facilities to post a CMS-specified form at the end of the shift. However, this final rule requires facilities to post nurse staffing information at the beginning of the shift. In addition, we do not require facilities to post the number of FTEs on the form because we determined, based on public comments received on the February 27, 2004 proposed rule, that the process of calculating FTEs would be burdensome for facilities and the data collected might not be comprehensible to residents and visitors.

Section 483.30(e)(3) Public Access and Data Retention Requirements

SNFs and NFs must make their daily nurse staffing records available to the public for review at a cost not to exceed the community standard.

Section 483.30(e)(4) Facility Data Retention Requirements

SNFs and NFs must maintain nurse staffing records for 18 months or as required by State law, whichever is greater. This covers the annual survey period and gives the surveyors the opportunity to verify the records if they choose to do so.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Below is a summary of the information collection requirements in this regulation:

Section 483.30 Nursing Services

In summary, section 483.30(e)(2) requires that long-term care facilities use the CMS-specified form (Daily Nurse Staffing Form) to enter the information specified in paragraph (e)(1) of this section; and to post the completed Daily Nurse Staffing Form in a prominent place readily accessible to residents and visitors.

The burden associated with this requirement is the time and effort it will take for the facility to complete the form and post it. Currently, there are 16,473 participating nursing homes. We estimate a total of 5 minutes to fill in the information per day. We further estimate that it will require facilities 30.42 hours each on an annual basis to meet these collection requirements.

Section 483.30(e)(3) requires the facility to make the information required in § 483.30(e)(1)–(2) available to the public and to maintain documentation.

The burden associated with this requirement will be the time it will take for the facility to retrieve the documented information being requested. We believe this requirement to be usual and customary business practice; therefore, the burden for this collection requirement is exempt under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3).

VIII. Regulatory Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of

the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. According to the Small Business Administration (SBA) approximately 53 percent of all SNFs and NFs generate revenues of $11.5 million or less in a one year period, and are considered small entities. Individuals and States are not included in the definition of small entities. The only burden associated with this rule is the information collection burden associated with collecting and posting nurse staffing data. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals because it applies only to SNFs and NFs.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The only burden associated with this rule is the information collection burden associated with collecting and posting nurse staffing data. This final rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation will not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 483 as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 483.30 is amended by adding paragraph (e) to read as follows:

§ 483.30 Nursing services.

* * * * *

(e) *Nurse staffing information*—(1) *Data requirements.* The facility must post the following information on a daily basis:

(i) Facility name.

(ii) The current date.

(iii) The total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift:

(A) Registered nurses.

(B) Licensed practical nurses or licensed vocational nurses (as defined under State law).

(C) Certified nurse aides.

(iv) Resident census.

(2) *Posting requirements.* (i) The facility must post the nurse staffing data specified in paragraph (e)(1) of this section on a daily basis at the beginning of each shift.

(ii) Data must be posted as follows:

(A) Clear and readable format.

(B) In a prominent place readily accessible to residents and visitors.

(3) *Public access to posted nurse staffing data.* The facility must, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard.

(4) *Facility data retention requirements.* The facility must maintain the posted daily nurse staffing data for a minimum of 18 months, or as required by State law, whichever is greater.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 21, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 16, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–21278 Filed 10–27–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 050729208–5267–02; I.D. 060805B]

RIN 0648–AP51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a comprehensive amendment prepared by the Caribbean Fishery Management Council (Council) to amend its Reef Fish, Spiny Lobster, Queen Conch, and Coral Fishery Management Plans (FMPs). The comprehensive amendment is designed to ensure the FMPs are fully compliant with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule redefines the fishery management units for the FMPs; establishes seasonal closures; imposes gear restrictions and requirements;

revises requirements for marking pots and traps; and prohibits the filleting of fish at sea. In addition, the comprehensive amendment establishes biological reference points and stock status criteria; establishes rebuilding schedules and strategies to end overfishing and rebuild overfished stocks; provides for standardized collection of bycatch data; minimizes bycatch and bycatch mortality to the extent practicable; designates essential fish habitat (EFH) and EFH habitat areas of particular concern (HAPCs); and minimizes adverse impacts on such habitat to the extent practicable. The intended effect of this final rule is to achieve optimum yield in the fisheries and provide social and economic benefits associated with maintaining healthy stocks.

DATES: This final rule is effective November 28, 2005.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and Record of Decision (ROD) are available from Dr. Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and off the U.S. Virgin Islands are managed under the respective fishery management plans prepared by the Council. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. This final rule implements Amendment 2 to the FMP for the Spiny Lobster Fishery, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, known collectively as the Comprehensive Amendment to the FMPs of the Caribbean.

NMFS published a notice of availability for the comprehensive amendment in the **Federal Register** on June 16, 2005, and requested public comment on the amendment (70 FR 35053). On September 13, 2005, NMFS published the proposed rule to implement the comprehensive amendment and requested public comment on the proposed rule (70 FR 53979). NMFS approved the comprehensive amendment on September 14, 2005. The rationale for the measures in the comprehensive amendment is provided in the amendment and in the preamble to the proposed rule and is not repeated here. This final rule is implemented with no changes from the proposed rule.

Comments and Responses

NMFS received 17 comments on the comprehensive amendment and proposed rule. Following is a summary of the comments and NMFS' responses.

Biological Reference Points and Stock Status Determination Criteria

Comment 1: The data underlying the calculations for maximum sustainable yield (MSY) do not comply with the Magnuson-Stevens Act requirement to use the best scientific information available. In data-poor situations, it is appropriate to base estimates of MSY on catch levels, such as is done in the amendment. However, catch estimates derived from the Marine Recreational Fishery Statistics Survey (MRFSS) are widely regarded as flawed and inconclusive. The Council needs to develop a more suitable tool for determining recreational catch levels. Estimates of MSY should be set more conservatively.

Response: NMFS and the Council acknowledge there are data limitations regarding all Caribbean fisheries, but NMFS disagrees that the MRFSS data are flawed and inconclusive. The primary purpose of the MRFSS survey techniques is to produce regional (and possibly by state), annual estimates of recreational saltwater fishing effort, catch and participation. These methods have been peer-reviewed and found to be adequate or better for their intended purpose and scope. The MRFSS program began in Puerto Rico in 2000 and routinely collects information on both catch and discards. Over 2,700 field intercept angler observations were made in the year 2000, and sampling continues at a similar level. Under other actions in the amendment, more robust standardized reporting requirements are being established, and as additional data become available in the future, these catch estimates can be revised. Until such data become available, the amendment includes several processes intended to ensure quality control in the establishment of MSY for the various stocks. MSY is not simply defined as the long-term average catch. Equating MSY to just the average catch over time assumes that both biomass (B) and fishing mortality (F) are consistent and able to produce MSY. Additionally, the time period over which catches are averaged would need to be sufficient to observe trends in the fishery. Recognizing the data for the U.S. Caribbean do not meet these assumptions, the Council selected a proxy for MSY derived from recent catch (C), modified by estimates of the current biomass (B) and fishing mortality (F) ratios. This allows the Council to ensure that MSY reflects situations when B or F are above or below the level needed to produce MSY.

The Council's choice of targets and limit reference points is based on the recommendations of NMFS' Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Technical Guidance). The Technical Guidance states ''in cases of severe data limitations, qualitative approaches may be necessary, including expert opinion and consensus-building methods,'' which was the approach used by the Council. The Council depended heavily on the recommendations of its Sustainable Fisheries Act (SFA) Working Group, which consisted of Council staff, NMFS scientists, representatives from various U.S. Virgin Islands and Puerto Rico fishery management agencies, and representatives from several environmental organizations. This expert group offered its best professional judgment to the Council regarding appropriate values, based on the available scientific and anecdotal information.

MSY values chosen for spiny lobster and reef fishes are the lowest values considered other than closing the fisheries and setting MSY at zero. MSY for queen conch is an intermediate value of the range of alternatives considered and provides a moderate level of fishing mortality on the stock. The Council chose to prohibit all take of queen conch in the exclusive economic zone (EEZ) except for a small area of Lang Bank, which will aid this species' recovery from an overfished condition.

Comment 2: Most Caribbean snapper and grouper species and many grunt species are overfished or at risk of being overfished. Establishing a proxy B ratio of 0.75 is less conservative than an option assuming the stocks are more depressed by providing a B ratio of 0.50.

Response: Only Snapper Unit 1 (4 species), Grouper Unit 4 (4 species), and the parrotfishes (10 species) are considered to be at risk. Four species are identified as being overfished. The selections of B and F ratios for these

species or species units follow the recommendations developed in the Technical Guidance for a default target control rule. Information is insufficient to determine a precise status for each species or species unit; establishing a more conservatively based B ratio could be unnecessarily restrictive. The Council is proposing several harvesting restrictions intended to reduce fishing mortality and improve the condition of these stocks.

Comment 3: One commenter suggested that establishing optimum yield (OY) as the average yield associated with fishing at F_{OY}, where $F_{OY} = 0.75\ F_{MSY}$, was unduly punishing to resource users, and assumes the relationship between fishing effort and catch is linear. Conversely, one commenter suggested this selection was not conservative as it allows yields at 94 percent of MSY.

Response: As noted for Comment 1, the Council's choice of targets and limit reference points is based on the recommendations of the Technical Guidance. The recommended default for a constant-F target strategy should restrain F to a level 20 to 30 percent below the maximum fishing mortality threshold. Establishing a target F at 75 percent of F_{MSY} results in yields of 94 percent of MSY or higher and creates a biomass level of at least 125 percent of B_{MSY} once the stock reaches equilibrium. This does not mean yields allowed on a depressed stock are 94 percent of MSY. A constant-F approach is more conservative because it restricts F on the stock at any size, whereas a constant catch approach could allow excessive harvest under low MSY values and be too restrictive under a larger MSY.

Comment 4: Establishing minimum stock size threshold (MSST) as $B_{MSY}(1–c)$ where ''c'' is natural mortality (M) or 0.50, whichever is smaller, is restrictive.

Response: The Council's choice for MSST follows the guidance for a default MSY control rule. Setting ''c'' equal to 1–M or 0.50 is expected to allow a stock fished at F_{MSY} to fluctuate its biomass around B_{MSY}, allowing for variation in natural mortality.

Comment 5: National Standard 8 of the Magnuson-Stevens Act allows managers to consider the potential socio-economic impacts as long as they are consistent with the primary goals of ending overfishing and rebuilding depleted populations. Nevertheless, the Council chose the most liberal alternative for maximum fishing mortality threshold (MFMT), citing the need to minimize short-term socio-economic impacts as its justification. The priority in setting MFMT is conservation of resource.

Response: The Council's preferred alternatives to reduce F and end overfishing are consistent with the choices for stock status determination criteria. The Council's proposed harvesting restrictions are intended to reduce F by as much as 30 percent, leading to improved conditions of these stocks.

Reducing Fishing Mortality

Comment 6: The Council should have selected the alternative requiring the establishment of a Memorandum of Understanding (MOU) between NMFS and the state governments to develop compatible regulations for all its managed species.

Response: The Council did select alternatives to develop MOUs for Nassau grouper and queen conch. The Council continually recognized the importance of compatible state regulations, given the vast majority of harvest occurs in state-controlled waters. The U.S. Virgin Islands state representatives on the Council have agreed to pursue implementing state regulations to prohibit harvest of Nassau grouper, and the Council's suite of preferred alternatives are based in large part on measures already in place in Puerto Rico.

Comment 7: The Council's choice of actions to reduce F through gear restrictions is not adequate. Gillnets would be prohibited in the EEZ, but continued limited use for non-managed baitfish would be allowed, thus contributing to bycatch. The Council rejected the alternative to prohibit fish traps--the dominant fishing gear used in the Caribbean.

Response: The Council estimates the prohibition on the use of gillnets and trammel nets may provide an overall F reduction of about 10 percent, with F on species such as parrotfish reduced as much as 30 percent. Bycatch issues will additionally be addressed through the proposed action. Many gillnets in the EEZ are set on the bottom, and a secondary benefit to their prohibition is a reduction in physical damage to the habitat. The restricted use of surface gillnets for baitfish, such as ballyhoo, is species-specific. The requirement to constantly tend the nets will reduce bycatch and the potential for lost gear that could continue to ''ghost'' fish. Additionally, most of this effort occurs in shallow state waters. The allowable use of gillnets to catch surface fishes such as ballyhoo should not have impacts to habitat.

The Council considered but rejected an alternative to ban fish traps in the EEZ. Such a ban could theoretically reduce F by 20 to 67 percent; however, the majority of fish trap effort occurs in state waters, and the actual reductions in F in the EEZ were likely to be much lower. Because there is limited fishable area for fish traps in the EEZ, the Council concluded a prohibition of this gear in the EEZ would likely transfer the limited effort in the EEZ to state waters, where more juveniles would be taken, thus negating any benefits of the Federal prohibition.

Comment 8: Species-specific seasonal closures will not be as effective as area closures to protect spawning aggregations of Grouper Unit 4, parrotfish, and Snapper Unit 1. These species will continue to be caught while fishing for other species occurs.

Response: The Council recognized there would be a regulatory discard issue when these species are taken during a closed season. However, closing specific areas would still allow the species to be taken in areas not closed to fishing. Allowing continued harvest would not reduce F as needed. A seasonal closure of the entire U.S. Caribbean during the peak spawning periods for each species group is necessary to achieve these reductions.

Comment 9: It is unnecessary to close the EEZ to queen conch fishing. Catches in St. Thomas have never approached 1 percent of MSY levels, whereas the fishery in St. Croix has landed queen conch in excess of MSY occasionally and in excess of OY consistently.

Response: The status of the queen conch resource was determined for the U.S. Caribbean as a whole. The stock is considered overfished, and reductions in fishing mortality are necessary. NMFS estimates the EEZ comprises only 14 percent of the fishable habitat of the U.S. Caribbean. Fishing for queen conch off Puerto Rico occurs almost entirely in state waters. Off the U.S. Virgin Islands, including state waters, landings are approximately 39,000 lb (17,690 kg). Because queen conch are generally harvested by hand, depth is another limiting factor, thus, most harvest occurs in inshore waters. Approximately 14,000 lb (6,350 kg) are harvested in the Lang Bank area off St. Croix, and only 22 percent of these landings are estimated to come from Federal waters. Given the importance of this area to the social and economic stability of St. Croix fishermen, the Council chose to allow fishing to continue in the small area known as Lang Bank.

Rebuilding Strategies

Comment 10: The Council chose the shortest rebuilding period for Nassau

and goliath grouper, and prohibited filleting fish at sea to help reduce illegal catches of these species. However, efforts should be made to protect sites in Federal waters where Nassau and goliath grouper aggregate to spawn.

Response: NMFS agrees a prohibition of filleting fish at sea will reduce illegal harvest of prohibited or undersized species. Identifying areas in the EEZ where Nassau and goliath grouper aggregate to spawn would not further reduce F on these species. The harvest and possession of Nassau and goliath grouper in or from the entire Caribbean EEZ is already prohibited.

Comment 11: The life history information used to develop the rebuilding schedules and recovery strategies is in error. The proposed rebuilding periods are longer than what is consistent with accepted life history information.

Response: The Council considered three alternatives to each rebuilding strategy. For Nassau grouper, goliath grouper, and queen conch, the Council chose the rebuilding time frame recognizing the lower generation time for these species. For Grouper Unit 4, the Council chose the longest time frame (10 years) to reduce the social and economic impacts that would have occurred under shorter (2 and 6 years) schedules. Each of the rebuilding strategies was developed using the best available scientific information on each species. These data were reviewed by NMFS and the Council's SFA Working Group comprised of representatives of NMFS, the Council, state agencies, and interested stakeholders. This Working Group provided technical guidance and recommendations to the Council during its deliberations, choosing the most appropriate time frame for each rebuilding strategy.

Comment 12: In the case of overfished species, the Magnuson-Stevens Act requires managers to specify a rebuilding period that is ''as short as possible.'' Although the Council chose the shortest rebuilding period for Nassau and goliath grouper, of the alternatives considered, they chose the longest period (10 years) for Grouper Unit 4.

Response: National Standard 8 of the Magnuson-Stevens Act requires managers to minimize socio-economic impacts as long as the actions are consistent with the primary goals of ending overfishing and rebuilding depleted populations. To that end, the National Standard Guidelines allow rebuilding strategies to be as long as 10 years as long as pertinent factors, such as the status of the stock and the needs of fishing communities, are appropriately considered. Under the proposed stock status criteria, Grouper Unit 4 is slightly overfished, with a stock size at 91 percent of MSST. The seasonal closure on this Unit is anticipated to achieve a 24–percent reduction in F, recovering the stock from an overfished condition under any of the alternative schedules considered (2, 6, or 10 years). To reduce the economic impacts of the shorter rebuilding schedules, the Council chose 10 years.

Comment 13: During its deliberations on the actions to be selected in this amendment, the Council changed its preferred alternative from the largest closed area of Grammanik Bank (23.57 square kilometers or 6.88 square nautical miles) to the smallest (1.50 square kilometers or 0.44 square nautical miles). A more moderate choice would provide better protection for yellowfin grouper spawning aggregations.

Response: The amendment also proposes to close the entire U.S. Caribbean EEZ to the harvest and possession of yellowfin grouper and other groupers in Grouper Unit 4 during February through April. However, such action does not preclude fishing in the EEZ for other species, whereby there will be incidental harvest and some mortality on yellowfin grouper and other grouper in Grouper Unit 4. Thus, the prohibition of all fishing on the Grammanik Bank is intended specifically to protect vulnerable aggregations of yellowfin grouper known to inhabit this distinct area during spawning season (February through April).

Comment 14: The amendment fails to establish a standardized bycatch reporting methodology. The proposed actions depend, in part, on MRFSS data, which is widely known to be flawed and inconclusive. Other alternatives could include observers, dockside interviews, or at-sea intercepts. One of the preferred alternatives only states that the Council will consult with Puerto Rico and the U.S. Virgin Islands to modify trip tickets into a standardized reporting mechanism. NMFS should require the Council to modify and update the trip ticket system to provide credible data.

Response: NMFS and the Council acknowledge there are data limitations regarding all Caribbean fisheries, but NMFS disagrees the MRFSS data are flawed and inconclusive. The MRFSS program only began in Puerto Rico in 2000, but it does routinely collect information on both catch and discards. Over 2,700 field intercept angler observations were made in the initial year, 2000, and sampling continues at a similar level. The proposed actions are intended to improve the existing databases in regard to both catch and bycatch in the Caribbean. Trip ticket programs are currently managed by the respective state agencies: the Department of Natural and Environmental Resources for Puerto Rico, and the Division of Fish and Wildlife for the U.S. Virgin Islands. Currently, Puerto Rico has no bycatch data collection program, and the U.S. Virgin Islands instituted their program in 2004. NMFS currently contributes $78,900 and $73,000 to commercial fisheries data gathering efforts in Puerto Rico and the U.S. Virgin Islands, respectively. The amendment establishes a standardized bycatch reporting methodology in partnership with both states. Both states have agreed to include standardized bycatch data collection within their trip ticket systems.

Comment 15: To reduce bycatch, the Council considered only one option: to amend regulations regarding trap construction to require one escape panel instead of maintaining the existing two-panel requirement.

Response: The Magnuson-Stevens Act defines bycatch as those fish which are harvested, but which are not sold or kept for personal use, and includes economic as well as regulatory discards. Data available for the Caribbean fisheries indicate that the vast majority of the catch is retained. Coupled to the preponderance of effort occurring in state waters, the Council concluded bycatch is a minor cause of fishing mortality in its fisheries. The Council did consider other options, such as increasing mesh size in fish traps and nets, but existing information indicates that even with increased mesh size, the quantity of discards remains the same. The Council is reverting to previous requirements to have only one escape panel based on public testimony. With two panels, there is a greater possibility of a panel breaking open during retrieval, losing the catch; thus, some fishermen are disabling the escape panels, negating any benefit of requiring two. The action to amend the escape panel requirement was agreed on by the fishermen, the state fishery management agencies, and the Council, and the states are interested in developing compatible regulations to reduce enforcement confusion. Therefore, the Council anticipates increased compliance with escape panel requirements, which will reduce bycatch mortality. In addition, many of the other actions in the amendment, such as seasonal closures, closed areas, and gear restrictions have

an ancillary benefit of reducing bycatch and bycatch mortality.

Comment 16: The designations of EFH are vague and overly broad. There is no consideration of designating EFH habitat areas of particular concern (EFH-HAPCs) for the Spiny Lobster and Queen Conch FMPs.

Response: The EFH regulations (50 CFR 600.815) contain guidance regarding the types and levels of information that should be used for describing and identifying EFH. These range from distribution; habitat-related densities; habitat-related growth, reproduction, or survival rates; and production rates by habitat. Where higher level information is sparse, such as with many fish species in the U.S. Caribbean, information is to be used in a risk-averse fashion to err on the side of conservation. Therefore, NMFS acknowledges designations of EFH are broad, but it is also important to realize that the area designated as EFH in U.S. waters comprises the aggregate of separate EFH designations for each life stage of each managed species. Unlike EFH, EFH-HAPCs are not a mandated component of an FMP. Councils are encouraged to designate EFH-HAPCs in order to focus conservation priorities on specific habitat areas that play a particularly important role in the life cycles of federally managed fish species. An HAPC is expected to be a localized area of EFH that is especially ecologically important, sensitive, stressed, or rare when compared to EFH. Seven alternative methods were considered for designating EFH-HAPCs; the preferred alternative relied upon expert opinion regarding factors related to EFH-HAPC selection. A panel of experts recommended HAPC sites. To designate HAPC sites in an efficient manner, it was necessary to determine which FMP the sites would be designated under. Sites with predominantly coral habitat were aligned with the Coral FMP, while sites with predominantly mangrove habitat were aligned with the Reef Fish FMP.

Comment 17: The amendment only generally states that anchors, pots/traps, gill/trammel nets, and bottom longlines have a potential adverse impact on EFH. This cursory evaluation does not cover all fishing activities undertaken in waters identified as EFH by the Council, nor does it adequately evaluate the impacts of fishing on EFH. We support the gear prohibitions and anchoring restrictions year round on Grammanik Bank, but do not believe these measures are sufficient to minimize adverse impacts on EFH. In addition, the amendment violates the National Environmental Policy Act (NEPA) by failing to analyze a broad range of management alternatives to minimize the adverse impacts of fishing on EFH.

Response: The impacts of fishing on EFH were analyzed in Sections 2.1.5, 3.5.1, 4.3, and 4.5 of the Final Environmental Impact Statement for the Generic EFH Amendment to the FMPs of the U.S. Caribbean (EFH FEIS). The EFH FEIS was prepared, in part, as a supporting document to the comprehensive amendment and was incorporated by reference. The EFH FEIS was prepared separately from the comprehensive amendment pursuant to a process outlined in the Joint Stipulation and Order filed in *American Oceans Campaign* v. *Evans*, Civil No. 99–982 (GK) (D.D.C. December 17, 2001). The EFH FEIS analyzed, within each fishery, a range of potential alternatives to: (1) describe and identify EFH for the fishery; (2) identify other actions to encourage the conservation and enhancement of such EFH; and (3) identify measures to minimize to the extent practicable the adverse effects of fishing on such EFH. In addition to pots/traps, gill/trammel nets, and bottom longlines, the other allowable gears in Caribbean fisheries include hook-and-line, handline, dip net, slurp gun, spear, and hand harvest. The EFH FEIS identified and evaluated the effects of all fishing gears, including prohibited gear, on EFH (See Section 3.5.1 and Tables 3.15, 4.1 and 4.2). Alternatives were not developed for gears whose effects on habitat were considered below a minimal and temporary threshold as determined by habitat/gear sensitivity and fishing effort. Six alternatives for preventing, mitigating, or minimizing adverse effects of fishing on EFH were presented in the EFH FEIS. The alternatives consisted of specific management actions that progressively increased the amount of restriction affecting the use of fishing gears allowed under the Reef Fish FMP and the Spiny Lobster FMP. Gear used under the Queen Conch FMP (hand harvest only) is not considered to have adverse impacts, and no harvest of coral is allowed under the Coral FMP. The gear prohibitions and anchoring restrictions proposed in the comprehensive SFA amendment are applicable to a large number of EFH sites throughout the Caribbean, not just Grammanik Bank. The two alternatives, a no-action alternative and a total year-round prohibition on the use of the predominant bottom-tending gears, represent the minimum and maximum action that could be taken. Other alternatives would have been less restrictive. Therefore, NMFS believes the Council did adequately consider a broad range of alternatives.

Classification

The Administrator, Southeast Region, NMFS, determined that the comprehensive amendment is necessary for the conservation and management of the reef fish, spiny lobster, queen conch, and coral fisheries of the Caribbean and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared a final supplemental environmental impact statement (FSEIS) for this amendment. The FSEIS was filed with the Environmental Protection Agency on June 17, 2005. A notice of availability was published on June 24, 2005 (70 FR 36582). In approving the comprehensive amendment on September 14, 2005, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

NMFS prepared a FRFA that incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows. Copies of the FRFA are available from NMFS (see **ADDRESSES**).

The final rule will implement an integrated FMP amendment that will bring the Caribbean Council's FMPs for spiny lobster, queen conch, reef fish, corals, and reef associated plants and invertebrates into full compliance with requirements added to the Magnuson-Stevens Act through the 1996 Sustainable Fisheries Act. The objectives of the rule are to: (1) define fishery management units (FMUs) and FMU sub-units; (2) specify biological reference points and stock status determination criteria; (3) regulate fishing mortality; (4) rebuild overfished fisheries; (5) conserve and protect yellowfin grouper; (6) achieve bycatch mandates; and (7) achieve the essential fish habitat mandates.

There were two comments that specifically addressed the economic impacts of the proposed rule. One comment implied that a regulatory flexibility analysis had not been conducted for the proposed rule. However, a regulatory flexibility analysis was conducted, and a summary of the IRFA was included in the published proposed rule. The second comment from a trade association stated that NMFS had not considered the

adverse economic impact of the proposed seasonal closure of an area of Grammanik Bank to all fishing, except highly migratory species, on small commercial fishers from St. Thomas. The association noted that the recent temporary rule, which prohibited fishing for or possession of any species, except highly migratory species, within an area of Grammanik Bank from February 1, 2005, through April 30, 2005, had an adverse economic impact on the four St. Thomas fishers that operate in the area, and for one of these fishers, the impact was heavy. In the IRFA, NMFS evaluated the economic impact of the seasonal Grammanik Bank closure on all small commercial U.S. Virgin Island fishers and concluded that the seasonal Grammanik Bank closure could have a significant adverse economic impact on some of the small commercial fishers that operate in the EEZ. The impacts were not, however, separated by which island the fishers operated from. In response to this comment, the FRFA includes a statement that the seasonal closure will have an adverse economic impact on four commercial fishers from St. Thomas, and the impact will be large for one of the fishers. No changes, however, were made to the rule as a result of these comments.

The final rule will affect commercial and recreational fishers and charter fishing services in Puerto Rico and the U.S. Virgin Islands. There are approximately 1,758 commercial fishers in Puerto Rico and 349 commercial fishers in the U.S. Virgin Islands. Approximately 50 entities offer year-round for-hire charter services in the U.S. Caribbean, with the majority located in the U.S. Virgin Islands. NMFS expects that 88 Puerto Rican commercial fishers (5 percent), 35 U.S. Virgin Island commercial fishers (10 percent), and 3 for-hire charter services (5 percent) operate in the EEZ and may be affected by this final rule. The Small Business Administration (SBA) size standards for the finfish, shellfish, and other marine fishing industries are $3.5 million in annual sales. The SBA size standard for the charter fishing industry is $6.0 million in annual sales. NMFS assumes all of the entities that may be affected by this final rule are small businesses. Thus, NMFS expects a total of 123 small businesses in commercial fishing and 3 small businesses in charter fishing services will be affected by this final rule. The final rule will: (1) prohibit fishing for or possession of queen conch in the EEZ, with the exception of Lang Bank east of St. Croix; (2a) move aquarium trade species of Caribbean coral and reef fish from a management to a data collection only category; (2b) move all species of Caribbean conch, with the exception of queen conch, to a data collection only category, thereby removing fishery management restrictions on these species; (3) close the EEZ to the possession of red, black, tiger, yellowfin, and yellowedge grouper from February 1 through April 30 of each year; (4) close the EEZ off the west coast of Puerto Rico to the possession of red hind from December 1 through the last day of February each year; (5) close the EEZ to the possession of black, blackfin, vermilion, and silk snapper from October 1 through December 31 of each year; (6) close the EEZ to the possession of mutton snapper and lane snapper from April 1 through June 30 of each year; (7a) implement an immediate prohibition against the use of gill and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster in the EEZ; (7b) require gill nets used to fish for bait fish in the EEZ to be tended at all times; (8) prohibit the filleting of fish in the EEZ and require that fish captured or possessed in the EEZ be landed with heads and fins intact, with minor exceptions; (9) close an area of the Grammanik Bank to fishing for or possession of any species of fish, except highly migratory species, from February 1 through April 30 of each year; (10) amend current requirements for trap construction such that only one escape panel is required, which could be the door; (11a) require at least one buoy that floats on the surface for all traps/pots fished individually for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11b) require at least one buoy at each end of trap lines linking traps/pots for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11c) prohibit use of pots/traps, gill/trammel nets, and bottom longlines on coral or hard bottom year-round in the existing seasonally closed areas and Grammanik Bank in the EEZ; and (11d) require an anchor retrieval system for all vessels that fish for or possess Caribbean reef fish species in or from the EEZ. In addition, consistent with the provisions of the comprehensive amendment, a standardized bycatch reporting methodology is being established in partnership with both states. Both states have agreed to include standardized bycatch data collection within their trip ticket systems.

The queen conch fishery occurs primarily in state waters. Approximately 92 percent of queen conch harvested in Puerto Rico is reported to be obtained from state waters, while 60 percent of queen conch harvested in the U.S. Virgin Islands is reported to be taken from state waters. Only 18 fishers were reported to have harvested queen conch in the EEZ in 1999 (2 from the U.S. Virgin Islands and 16 from Puerto Rico). Together, the 18 queen conch fishers represent 7 percent of the 260 U.S. Caribbean queen conch fishers, or less than 1 percent of all commercial fishing businesses in the U.S. Caribbean. The 16 queen conch fishers from Puerto Rico represent 8 percent of the 209 queen conch fishers from that state, and the 2 from the U.S. Virgin Islands represent 4 percent of the 51 queen conch fishers from that territory. NMFS expects that the prohibition against fishing for or possession of queen conch in the Caribbean EEZ, with the exception of Lang Bank east of St. Croix, will not have a significant economic impact on queen conch fishers from Puerto Rico but will likely have a greater adverse economic impact on the U.S. Virgin Island queen conch fishers that harvest the species in the Caribbean EEZ. Any small business that harvests species of Caribbean conch, other than queen conch, or aquarium trade species of Caribbean coral or reef fish in the EEZ will benefit from the movement of these species to a data-collection-only category because this movement will eliminate existing Federal fishing restrictions on these species. However, as stated in the IRFA, because harvest of these species occurs primarily in state waters, NMFS expects that any economic benefit obtained will be negligible.

The U.S. Caribbean reef fish fishery is essentially a multi-species fishery in that fishers catch multiple species of reef fish on any given trip. Consequently, the harvest of any particular species likely represents a small proportion of total revenue and profit for any given trip. Up to 5.8 percent of commercial fishers and 5.0 percent of for-hire charter services will be affected by the ban on the possession of red, black, tiger, yellowfin, and yellowedge grouper in the EEZ from February 1 through April 30 of each year; the ban on the possession of red hind in the EEZ from December 1 through the last day of February of each year; the ban on the possession of black, blackfin, vermilion, and silk snapper in the EEZ from October 1 through December 31 of each year; and the ban on the possession of mutton snapper and lane snapper in the EEZ from April

1 through June 30 of each year. To mitigate any revenue and profit losses that may result from the seasonal closures, commercial fishers and charter fishing operations that fish for reef fish in the EEZ may intensify fishing before and after the seasonal closures and/or relocate to state waters. The mitigating effects of these behavioral changes cannot be forecast. Nonetheless, the combined seasonal closures may have a significant adverse impact on a substantial number of small businesses.

The immediate prohibition against the use of gillnets and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster will require the adoption of other gear, most likely traps/pots, to harvest these species. NMFS expects the prohibition will affect a small number of the 5 percent of Puerto Rican commercial fishers that operate in the EEZ because waters depths in the EEZ off Puerto Rico do not favor the use of gillnets or trammel nets. The prohibition will likely affect more U.S. Virgin Island commercial fishers because there is more fishable habitat that can be targeted by gillnets and trammel nets in the EEZ off the U.S. Virgin Islands, and the use of gillnets and trammel nets has increased among St. Croix fishers. Consequently, NMFS expects the immediate prohibition against the use of gillnets and trammel nets will have a greater adverse economic impact on the 10 percent of U.S. Virgin Island commercial fishers that operate in the EEZ.

The immediate prohibition against the use of gillnets and trammel nets in the EEZ will not apply to the harvest of ballyhoo, houndfish, and flying fish, which are commonly found near the surface. When used to harvest these species in the EEZ, the nets must be tended at all times. Ballyhoo and houndfish are used as bait. At present, there is insufficient information to determine the economic impact on any small business that may currently harvest ballyhoo, houndfish, or flying fish in the EEZ by using untended gillnets and/or trammel nets.

Since 1990 and 1993, there have been prohibitions against the harvest and possession of Nassau grouper and goliath grouper in the EEZ, respectively; however, anecdotal evidence suggests that illegal harvest and possession occur. Prohibiting the filleting of all species of fish in the U.S. Caribbean EEZ, except highly migratory species or species caught and used for bait or the crew's own consumption, and requiring that all fish captured or possessed in the EEZ be landed with heads and fins intact will improve enforcement of existing prohibitions and result in reduced illegal revenues. At the same time, the prohibition may reduce legal revenues for those who fish in the EEZ and fillet their fish due to limited storage capacity. Because whole fish take up more space in a vessel than fillets, harvest per trip may be reduced. However, because the typical fishing vessel in the Caribbean EEZ does not have fish holds and, in many cases, does not use coolers, it is expected that a substantial number of the small businesses do not fillet their catches from the EEZ and will not experience a significant adverse economic impact.

The final rule will prohibit fishing for or possession of any species of fish, except highly migratory species, within a 0.44 nm^2 (1.5 km^2) area of Grammanik Bank from February 1 through April 30 of each year. NMFS expects the greatest adverse economic impact of the 3-month Grammanik Bank closure will be on fishers who harvest yellowfin grouper because the reported spawning aggregation of yellowfin grouper is centered within the closed area during this time. As previously discussed, the final rule will prohibit the possession of red, black, tiger, yellowfin, and yellowedge grouper in the U.S. EEZ from February 1 through April 30. The combined impact of the 3-month Grammanik Bank closure and the 3-month ban against the possession of the above species of grouper in the EEZ on yellowfin grouper fishers will be no revenues from yellowfin grouper fished for or possessed anywhere in the EEZ, which includes the closed area, for 3 months. To mitigate losses due to the prohibitions, yellowfin grouper fishers and other commercial fishers may intensify fishing before and after the seasonal bans and/or move their fishing activities to state waters. Nonetheless, the adverse economic impact will be significant for some of the small commercial fishers that operate in the EEZ. According to one U.S. Virgin Island trade association, the seasonal closure will have an adverse economic impact on the four St. Thomas commercial fishers who operate in the area, and for one of them, the impact will be large. The one fisher represents 25 percent of St. Thomas commercial fishers that operate in the area and 3 percent of U.S. Virgin Island commercial fishers that operate in the EEZ.

The final rule will require only one escape panel for traps and pots. This action relaxes the current requirement of two escape panels and therefore does not impose any adverse economic impact on small businesses.

The use of traps and pots in the EEZ is expected to be infrequent because of water depth. Nevertheless, for those fishers who use traps and pots in the EEZ, the requirement to have at least one buoy that floats on the surface for all traps or pots fished individually and to have at least one buoy at each end of trap lines linking traps/pots is not expected to impose a significant adverse impact because the additional gear expenses should be minor.

The year-round ban on the use of traps, pots, gillnets, trammel nets, and bottom longlines on coral or hard bottom habitat in currently existing, seasonally closed areas and the 0.44 nm^2 (1.5 km^2) area of Grammanik Bank represents a prohibition against the use of traditional gear types in these areas. This prohibition could be especially burdensome to U.S. Virgin Islands commercial fishers from St. Croix because they have already lost fishing areas in state waters due to U.S. Virgin Island closures. The majority of fishable habitat off St. Croix is primarily restricted to Lang Bank and, currently, the eastern half of Lang Bank is closed to all fishing from December 1 through the last day of February of each year. The final rule will ban the use of traditional gear in an area that encompasses approximately the easternmost half of Lang Bank. Consequently, NMFS expects the ban will have a significant adverse economic impact on those St. Croix commercial fishers that currently use traps, pots, gillnets, trammel nets, and/or bottom longlines in the eastern half of Lang Bank.

The final rule will require that the owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the EEZ ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery and damaging habitat. NMFS assumes that most commercial and charter fishing vessels that operate in the EEZ do not currently have an anchor retrieval system that meets the requirement. For those fishers that have a grapnel hook, this will require incorporating an anchor rode reversal bar that runs parallel along the shank. For those fishers that have a fluke or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required. There is currently insufficient information to quantify the number of fishing vessels that use the different types of anchors and the costs of making necessary modifications. However, NMFS expects the cost will not

represent a significant adverse economic impact on small businesses.

Although the current data collection system in the U.S. Caribbean, partially funded through Federal grants, does not require commercial fishers or charter fishing operations to report bycatch data, Puerto Rico has agreed to require that this information be reported, and the U.S. Virgin Islands has incorporated some bycatch data into its reporting requirements and will be improving the data collection. Consistent with the provisions of the comprehensive amendment, NMFS will consult with Puerto Rico in an effort to add data fields to Puerto Rico's existing mandatory landings reports in order to include consistent and standardized bycatch data. Consequently, the final rule does not directly impose any new reporting or recordkeeping requirements. However, the indirect economic impact of requiring additional reporting information will accrue to commercial fishing and charter fishing businesses in Puerto Rico through additional time to report bycatch information in the future. At present, there is insufficient information to quantify the amount of time necessary to report such information and how this might affect business operation; however, it is not expected to represent a significant adverse economic impact on a substantial number of small businesses.

Alternatives considered but rejected by the Council would have increased the adverse economic impact on small businesses. One alternative would have prohibited fishing for or possession of queen conch in the entire EEZ. Because the rejected alternative would have extended the prohibition to include Lang Bank east of St. Croix, it could have had a greater adverse economic impact on U.S. Virgin Island queen conch fishers. Alternatives to the seasonal bans on the possession of mutton snapper and lane snapper, red hind, and the respective snapper and grouper species would have banned the possession of all species managed by the Caribbean Council for 3 months, 6 months, or a year. Such bans would have had greater adverse economic impacts than the final rule because each rejected alternative would have banned the possession of more species for an equal or a longer period of time. The Council considered, but rejected, alternatives to the immediate prohibition against the use of gillnets and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster because the adverse economic impacts of the alternatives on small businesses could have been much greater than the final rule. Specifically, the rejected alternatives included the immediate prohibition against the use of fish traps in the Caribbean EEZ, the immediate prohibition against the use of gillnets or trammel nets in the Caribbean EEZ to fish for any species, and closing various areas of the EEZ to fishing for or possession of all species. Alternatives to the 3-month prohibition against fishing for or possession of any species of fish, except highly migratory species, within a 0.44 nm^2 (1.5 km^2) area of Grammanik Bank would have closed larger areas of the Bank or added a year-round ban against fishing for or possession of yellowfin grouper in the EEZ and, therefore, would have had greater adverse economic impacts on small commercial fishers than the final rule. Finally, the Council considered implementing a Federal permit system for commercial and charter fishing businesses that operate in the EEZ as an alternative to the recommendation that NMFS consult with Puerto Rico as the state modifies its mandatory landings reports; however, that alternative was rejected because it would have had a greater adverse economic impact than the alternative in the final rule.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 25, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.725 [Amended]

■ 2. In § 600.725, amend the table in paragraph (v), section V., as follows:

a. Under the heading ''1. Caribbean Spiny Lobster Fishery (FMP)'', remove entry ''C'' from the first and second columns; redesignate entries ''D'' and ''E'' as ''C'' and ''D'', respectively, in the first and second columns; and remove the phrase ''gillnet, trammel net'' from the second column in the newly redesignated entry ''D≥; and

b. Under the heading ''2. Caribbean Shallow Water Reef Fish Fishery (FMP)'', remove entry ''C'' from the first and second columns; and redesignate entry ''D'' as ''C'' in the first and second columns.

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.2, the definition of ''Caribbean conch resource'' is removed, and a definition of ''Caribbean queen conch'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Caribbean queen conch or *queen conch* means the species, *Strombus gigus*, or a part thereof.

* * * * *

■ 5. In § 622.6, paragraph (b)(1)(ii)(A) is revised to read as follows:

§ 622.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Caribbean EEZ.* Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

* * * * *

■ 6. In § 622.31, paragraph (l) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(l) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish or Caribbean spiny lobster. Possession of a

gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ is prima facie evidence of violation of this paragraph (l). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

■ 7. In § 622.32, paragraph (b)(1)(ii) is revised, and paragraph (b)(1)(iv) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(1) * * *

(ii) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

* * * * *

(iv) No person may fish for, or possess on board a fishing vessel, a Caribbean queen conch in or from the Caribbean EEZ, except during October 1 through June 30 in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

* * * * *

■ 8. In § 622.33, paragraph (a) introductory text is added and paragraph (a)(3) is revised, and paragraphs (a)(4) through (a)(7) are added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures.* In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(3) *Grammanik Bank closed area.* (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(ii) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of paragraph (a)(4) of this section, ''fish'' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. ''Highly migratory species'' means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(4) *Red, black, tiger, yellowfin, or yellowedge grouper.* From February 1 through April 30, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(5) *Additional red hind closure.* From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(6) *Vermilion, black, silk, or blackfin snapper.* From October 1 through December 31, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(7) *Lane or mutton snapper.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

* * * * *

■ 9. In § 622.38, paragraphs (a), (d), and (f) are revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; finfish in or from the Caribbean EEZ, except as specified in paragraphs (c) and (d) of this section; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

(d) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), ''bait'' means--

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in3 (7.6 cm3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

* * * * *

(f) Queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

* * * * *

■ 10. In § 622.40, paragraph (b)(1)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(1) * * *

(i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its

bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

* * * * *

■ 11. In § 622.41, paragraph (b) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(b) *Caribbean reef fish anchoring restriction.* The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

* * * * *

■ 12. In Appendix A to Part 622, Tables 1 and 2 are revised, and Table 5 is added to read as follows:

Appendix A to Part 622—Species Tables

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

I. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis spp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
II. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Aquarium Trade Species in the Coral FMP—The following species are included for data collection purposes only.

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona spp., Finger sponge
Myriastra spp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Anthozoans—Class Anthozoa
1. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
2. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
3. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES—Continued

Spirobranchus giganteus, Christmas tree worm

IV. Mollusks—Phylum Mollusca

A. Gastropods—Class Gastropoda

Family Elysiidae

Tridachia crispata, Lettuce sea slug

Family Olividae

Oliva reticularis, Netted olive

Family Ovulidae

Cyphoma gibbosum, Flamingo tongue

B. Bivalves—Class Bivalvia

Family Limidae

Lima spp., Fileclams

L. scabra, Rough fileclam

Family Spondylidae

Spondylus americanus, Atlantic thorny oyster

C. Cephalopods—Class Cephalopoda

1. Octopuses—Order Octopoda

Family Octopodidae

Octopus spp. (except the Common octopus, *O. vulgaris*)

V. Arthropods—Phylum Arthropoda

A. Crustaceans—Subphylum Crustacea

1. Decapods—Order Decapoda

Family Alpheidae

Alpheaus armatus, Snapping shrimp

Family Diogenidae

Paguristes spp., Hermit crabs

P. cadenati, Red reef hermit

Family Grapsidae

Percnon gibbesi, Nimble spray crab

Family Hippolytidae

Lysmata spp., Peppermint shrimp

Thor amboinensis, Anemone shrimp

Family Majidae, Coral crabs

Mithrax spp., Clinging crabs

M. cinctimanus, Banded clinging

M. sculptus, Green clinging

Stenorhynchus seticornis, Yellowline arrow

Family Palaemonida

Periclimenes spp., Cleaner shrimp

Family Squillidae, Mantis crabs

Gonodactylus spp.

Lysiosquilla spp.

Family Stenopodidae, Coral shrimp

Stenopus hispidus, Banded shrimp

S. scutellatus, Golden shrimp

VI. Echinoderms—Phylum Echinodermata

A. Feather stars—Class Crinoidea

Analcidometra armata, Swimming crinoid

Davidaster spp., Crinoids

Nemaster spp., Crinoids

B. Sea stars—Class Asteroidea

Astropecten spp., Sand stars

Linckia guildingii, Common comet star

Ophidiaster guildingii, Comet star

Oreaster reticulatus, Cushion sea star

C. Brittle and basket stars—Class Ophiuroidea

Astrophyton muricatum, Giant basket star

Ophiocoma spp., Brittlestars

Ophioderma spp., Brittlestars

O. rubicundum, Ruby brittlestar

D. Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin

Echinometra spp., Purple urchin

Eucidaris tribuloides, Pencil urchin

Lytechinus spp., Pin cushion urchin

Tripneustes ventricosus, Sea egg

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES—Continued

E. Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

VII. Chordates—Phylum Chordata

A. Tunicates—Subphylum Urochordata

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH

Lutjanidae—Snappers

Unit 1

Silk snapper, *Lutjanus vivanus*

Blackfin snapper, *L. buccanella*

Black snapper, *Apsilus dentatus*

Vermilion snapper, *Rhomboplites aurorubens*

Unit 2

Queen snapper, *Etelis oculatus*

Wenchman, *Pristipomoides aquilonaris*

Unit 3

Gray snapper, *Lutjanus griseus*

Lane snapper, *Lutjanus synagris*

Mutton snapper, *Lutjanus analis*

Dog snapper, *Lutjanus jocu*

Schoolmaster, *Lutjanus apodus*

Mahogany snapper, *Lutjanus mahogani*

Unit 4

Yellowtail snapper, *Ocyurus chrysurus*

Serranidae—Sea basses and Groupers

Unit 1

Nassau Grouper, *Epinephelus striatus*

Unit 2

Goliath grouper, *Epinephelus itajara*

Unit 3

Red hind, *Epinephelus guttatus*

Coney, *Epinephelus fulvus*

Rock hind, *Epinephelus adscensionis*

Graysby, *Epinephelus cruentatus*

Creole-fish, *Paranthias furcifer*

Unit 4

Red grouper, *Epinephelus morio*

Yellowedge grouper, *Epinephelus flavolimbatus*

Misty grouper, *Epinephelus mystacinus*

Tiger grouper, *Mycteroperca tigris*

Yellowfin grouper, *Mycteroperca venenosa*

Haemulidae—Grunts

White grunt, *Haemulon plumieri*

Margate, *Haemulon album*

Tomtate, *Haemulon aurolineatum*

Bluestriped grunt, *Haemulon sciurus*

French grunt, *Haemulon flavolineatum*

Porkfish, *Anisotremus virginicus*

Mullidae—Goatfishes

Spotted goatfish, *Pseudupeneus maculatus*

Yellow goatfish, *Mulloidichthys martinicus*

Sparidae—Porgies

Jolthead porgy, *Calamus bajonado*

Sea bream, *Archosargus rhomboidalis*

Sheepshead porgy, *Calamus penna*

Pluma, *Calamus pennatula*

Holocentridae—Squirrelfishes

Blackbar soldierfish, *Myripristis jacobus*

Bigeye, *Priacanthus arenatus*

Longspine squirrelfish, *Holocentrus rufus*

Squirrelfish, *Holocentrus adscensionis*

Malacanthidae—Tilefishes

Blackline tilefish, *Caulolatilus cyanops*

Sand tilefish, *Malacanthus plumieri*

Carangidae—Jacks

Blue runner, *Caranx crysos*

Horse-eye jack, *Caranx latus*

Black jack, *Caranx lugubris*

Almaco jack, *Seriola rivoliana*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Bar jack, *Caranx ruber*

Greater amberjack, *Seriola dumerili*

Yellow jack, *Caranx bartholomaei*

Scaridae—Parrotfishes

Blue parrotfish, *Scarus coeruleus*

Midnight parrotfish, *Scarus coelestinus*

Princess parrotfish, *Scarus taeniopterus*

Queen parrotfish, *Scarus vetula*

Rainbow parrotfish, *Scarus guacamaia*

Redfin parrotfish, *Sparisoma rubripinne*

Redtail parrotfish, *Sparisoma chrysopterum*

Stoplight parrotfish, *Sparisoma viride*

Redband parrotfish, *Sparisoma aurofrenatum*

Striped parrotfish, *Scarus croicensis*

Acanthuridae—Surgeonfishes

Blue tang, *Acanthurus coeruleus*

Ocean surgeonfish, *Acanthurus bahianus*

Doctorfish, *Acanthurus chirurgus*

Balistidae—Triggerfishes

Ocean triggerfish, *Canthidermis sufflamen*

Queen triggerfish, *Balistes vetula*

Sargassum triggerfish, *Xanthichthys rigens*

Monacanthidae—Filefishes

Scrawled filefish, *Aluterus scriptus*

Whitespotted filefish, *Cantherhines macrocerus*

Black durgon, *Melichthys niger*

Ostraciidae—Boxfishes

Honeycomb cowfish, *Lactophrys polygonia*

Scrawled cowfish, *Lactophrys quadricornis*

Trunkfish, *Lactophrys trigonus*

Spotted trunkfish, *Lactophrys bicaudalis*

Smooth trunkfish, *Lactophrys triqueter*

Labridae—Wrasses

Hogfish, *Lachnolaimus maximus*

Puddingwife, *Halichoeres radiatus*

Spanish hogfish, *Bodianus rufus*

Pomacanthidae—Angelfishes

Queen angelfish, *Holacanthus ciliaris*

Gray angelfish, *Pomacanthus arcuatus*

French angelfish, *Pomacanthus paru*

Aquarium Trade—The following aquarium trade species are included for data collection purposes only:

Frogfish, *Antennarius* spp.

Flamefish, *Apogon maculatus*

Conchfish, *Astrapogen stellatus*

Redlip blenny, *Ophioblennius atlanticus*

Peacock flounder, *Bothus lunatus*

Longsnout butterflyfish, *Chaetodon aculeatus*

Foureye butterflyfish, *Chaetodon capistratus*

Spotfin butterflyfish, *Chaetodon ocellatus*

Banded butterflyfish, *Chaetodon striatus*

Redspotted hawkfish, *Amblycirrhitus pinos*

Flying gurnard, *Dactylopterus volitans*

Atlantic spadefish, *Chaetodipterus faber*

Neon goby, *Gobiosoma oceanops*

Rusty goby, *Priolepis hipoliti*

Royal gramma, *Gramma loreto*

Creole wrasse, *Clepticus parrae*

Yellowcheek wrasse, *Halichoeres cyanocephalus*

Yellowhead wrasse, *Halichoeres garnoti*

Clown wrasse, *Halichoeres maculipinna*

Pearly razorfish, *Hemipteronotus novacula*

Green razorfish, *Hemipteronotus splendens*

Bluehead wrasse, *Thalassoma bifasciatum*

Chain moray, *Echidna catenata*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Batfish, *Ogcocepahalus* spp.
Goldspotted eel, *Myrichthys ocellatus*
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Cherubfish, *Centropyge argi*
Rock beauty, *Holacanthus tricolor*
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Glasseye snapper, *Priacanthus cruentatus*
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Caribbean tonguefish, *Symphurus arawak*
Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.
Sand diver, *Synodus intermedius*
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

* * * * *

TABLE 5 OF APPENDIX A TO PART 622—CARIBBEAN CONCH RESOURCES

Queen conch, *Strombus gigas*

The following species are included for data collection purposes only:

Atlantic triton's trumpet, *Charonia variegata*
Cameo helmet, *Cassis madagascarensis*
Green star shell, *Astrea tuber*
Hawkwing conch, *Strombus raninus*
Milk conch, *Strombus costatus*
Roostertail conch, *Strombus gallus*
West Indian fighting conch, *Strombus pugilis*
True tulip, *Fasciolaria tulipa*

[FR Doc. 05–21559 Filed 10–25–05; 1:46 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 208
Friday, October 28, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22806; Directorate Identifier 2005–SW–04–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Model 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron (Bell) Model 206B helicopters modified with Aeronautical Accessories, Inc. (AAI) Supplemental Type Certificate (STC) No. SH8435SW or SH8419SW with energy attenuating seat installation wire (wire). The AD would require replacing certain wire with airworthy wire. This proposal is prompted by disclosure that certain wires may not have the yield strength to allow seats to attenuate energy during an emergency landing. The actions specified by the proposed AD are intended to prevent failure of a seat to attenuate energy during an emergency landing, which could result in occupant injury.

DATES: Comments must be received on or before December 27, 2005.

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

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

You may get the service information identified in this proposed AD from Aeronautical Accessories, Inc., P.O. Box 3689, Bristol, Tennessee 37625–3689.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2005–22806, Directorate Identifier 2005–SW–04–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

This document proposes adopting a new AD for Bell Model 206B helicopters with AAI STC No. SH8435SW or SH8419SW. The AD would require replacing wires that were manufactured or invoiced during a specified time frame. This proposal is prompted by disclosure that certain wires may not have the yield strength necessary to allow seats to attenuate energy during an emergency landing. This condition, if not corrected, could result in failure of a seat to attenuate energy during an emergency landing resulting in occupant injury.

We have reviewed AAI Alert Service Bulletin No. AA–04107, Revision B, dated April 8, 2005 (ASB), which describes procedures for determining either the manufacture date or the installation date of wires, part number (P/N) 157–13000–39, 157–13000–40, and 157–43000–61. The ASB specifies replacing these part-numbered wires based on specific manufacture or installation dates.

This unsafe condition is likely to exist or develop on other helicopters with the same supplemental type design. Therefore, the proposed AD would require within 60 days:

- Determining the manufacture or invoice date of wires, P/N 157–13000–39, 157–13000–40, and 157–43000–61.
- Replacing wire, P/N 157–13000–39 and 157–13000–40, with airworthy wire if the manufacture date is within the range of dates from September 1, 2001, through September 30, 2004, inclusive, or if the manufacture date cannot be determined and the AAI invoice is not dated before September 1, 2001.
- Replacing wire, P/N 157–43000–61, with airworthy wire if the manufacture date is within the range of dates from September 1, 2002, through September 30, 2004, inclusive, or if the manufacture date cannot be determined and the AAI invoice is not dated before September 1, 2002. The actions would be required to be accomplished by

following the specified portions of the ASB described previously.

We estimate that this proposed AD would affect 200 helicopters of U.S. registry, and would take about 2 work hours per helicopter to determine the manufacture and invoice date of the wires and to replace the wires at an average labor rate of $65 per work hour. The manufacturer states in its ASB that they will provide the wire. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $26,000, assuming the manufacturer provides the wiring at no cost.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 a new airworthiness directive to read as follows:

Bell Helicopter Textron: Docket No. FAA–2005–22806; Directorate Identifier 2005–SW–04–AD.

Applicability: Model 206B helicopters modified with Aeronautical Accessories, Inc. (AAI) Supplemental Type Certificate (STC) No. SH8435SW or SH8419SW, with energy attenuating seat installation wire (wire), part number (P/N) 157–13000–39, 157–13000–40, or 157–43000–61, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a seat to attenuate energy during an emergency landing resulting in occupant injury, accomplish the following:

(a) Within 60 days, determine the manufacture date or invoice date of the wire.

(1) Before further flight, replace wire, P/N 157–13000–39 and 157–13000–40, with airworthy wire if the manufacture date is within the range of dates from September 1, 2001 through September 30, 2004, inclusive, or if the manufacture date cannot be determined and the AAI invoice is not dated before September 1, 2001. To replace the wire, follow the Accomplishment Instructions, section I, paragraphs 1 through 11, of Aeronautical Accessories, Inc. Alert Service Bulletin ASB No. AA–04107, Revision B, dated April 8, 2005 (ASB).

(2) Before further flight, replace wire, P/N 157–43000–61, with airworthy wire if the manufacture date is within the range of dates from September 1, 2002, through September 30, 2004, inclusive, or if the manufacture date cannot be determined and the AAI invoice is not dated before September 1, 2002. To replace the wire, follow the Accomplishment Instructions, section I, paragraphs 1 through 11, of the ASB.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Rotorcraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on October 21, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–21541 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–2005–22242]

RIN 2127–AJ57

Federal Motor Vehicle Safety Standards; Cargo Carrying Capacity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period for a notice of proposed rulemaking (NPRM).

SUMMARY: This document extends the comment period on a notice of proposed rulemaking (NPRM) published on August 31, 2005 (70 FR 51707) that addresses motor home and travel trailer overloading by proposing to amend the Federal motor vehicle safety standard (FMVSS) on tire selection and rims for motor vehicles other than passenger cars. We also proposed a related amendment to our safety standard for tire selection and rims for light vehicles. The comment due date was October 31, 2005.

In a submission dated October 14, 2005, a coalition of trade associations representing vehicle manufacturers and dealers asked NHTSA for an extension of this due date. This document grants that request and extends the comment due date for the NPRM to November 30, 2005.

DATES: The due date for comments on DOT Docket No. NHTSA–2005–22242 is extended to November 30, 2005.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. You may visit the Docket from 10

a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. William D. Evans, Office of Crash Avoidance Standards at (202) 366–2272. His FAX number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On August 31, 2005 (70 FR 51707), NHTSA published a notice of proposed rulemaking to amend Federal Motor Vehicle Safety Standards Nos. 120 *Tire selection and rims for motor vehicles other than passenger cars*, and 110, *Tire selection and rims*. We proposed to require manufacturers of motor homes and travel trailers over 4,536 kilograms (10,000 pounds) GVWR to provide information to consumers in a label that is intended to inform the consumer about the vehicle's cargo carrying capacity (CCC). This information would be helpful both at the time the consumer is making a purchase decision and also as the consumer uses his or her vehicle. We also proposed to require that the size of tires on the same motor homes and travel trailers be the same as the size of the tires listed on the tire information label required by FMVSS No. 120.

We proposed to limit our CCC label to motor homes and travel trailers with a GVWR greater than 4,536 kilograms (10,000 pounds) as these are the vehicles that have large open interior areas that consumers fill with cargo. We noted that Recreational vehicles (RV) with GVWRs equal to or less than 4,536 kilograms (10,000 pounds) will be required to have less detailed CCC information as a result of an amendment to FMVSS No. 110, which took effect on September 1, 2005. It should be noted that on September 1, 2005, FMVSS No. 120 was changed to apply to vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds) and FMVSS No. 110 was changed to apply to vehicles with a GVWR equal to or less than 4,536 kilograms (10,000 pounds).

It is our belief that the proposed rule complements the efforts of the recreational vehicle industry to provide consumers with information in order to help reduce overloading in motor homes and travel trailers.

In addition, we stated our belief that the proposed rule would provide regulatory relief for dealers from a labeling requirement in FMVSS No. 110. The standard's requirement may currently require dealers that add even small amounts of weight to re-label the vehicles. Under the proposed amendment, dealers that add weight in excess of 0.5 percent of the vehicles' gross vehicle weight ratings would be required to disclose this extra weight on labels affixed to the vehicles. Dealers could add lesser amounts of weight without needing to change or add labels.

The NPRM announced a comment due date of October 31, 2005.

In a joint letter dated October 14, 2005, the National Truck and Equipment Dealers Association, the National Automobile Dealers Association, the National Association of Trailer Manufacturers, the National Marine Manufacturers Association, the Recreational Vehicle Dealers Association, the Tire Industries Association, the Service Station Dealers of America and Allied Trades, the Specialty Equipment Market Association, the National Trailer Dealers Association, the Automotive Service Association, and the Automotive Aftermarket Industry Association asked for an extension of time to comment on the NPRM. The stated rationale was that additional time was necessary ''to allow for appropriate, well-reasoned comments addressing an array of practical technical issues associated with the cargo carrying capacity proposal.''

After considering the rationale explaining the need for extra time to consider the NPRM as well as that these groups are primarily small businesses and the parties most directly affected by the proposal, NHTSA has decided that it is in the public interest to grant the submitters' request. Therefore, NHTSA grants until November 30, 2005, submission of public comments on the NPRM of August 31, 2005.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 24, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–21500 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 102105A]

RIN 0648–AT11

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 11

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 11 to the Coastal Pelagic Species Fishery Management Plan (FMP) for Secretarial review. Amendment 11 would change the framework for the annual apportionment of the Pacific sardine harvest guideline along the U.S. Pacific coast. The purpose of Amendment 11 is to achieve optimal utilization of the Pacific sardine resource and equitable allocation of the harvest opportunity for Pacific sardine.

DATES: Comments on Amendment 11 must be received on or before December 27, 2005.

ADDRESSES: You may submit comments on the NOA identified by I.D. 102105A by any of the following methods:

- E-mail: *0648–AT11.SWR@noaa.gov*. Include I.D. 102105 in the subject line of the message.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.
- Fax: (562)980–4047

Copies of Amendment 11, which includes an Environmental Assessment/Initial Regulatory Flexibility Analysis/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034 or Mike Burner, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment to an FMP, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 11.

Amendment 11 establishes an allocation framework that would help to achieve optimal utilization and equitable allocation between the different sectors of the Pacific sardine fishery. The Council tasked the CPS Advisory Subpanel (Subpanel) to develop an initial range of allocation alternatives for a longer-term allocation framework. The Subpanel adopted a range of alternatives for the allocation of Pacific sardine at their meetings in August and September 2004. At the November 2004 meeting the Council reviewed the range of alternatives, and with some modification and additions forwarded nine alternatives to the CPS Management Team (Team) for preliminary analysis. When adopting a range of alternatives for long-term allocation in April 2005, the Council expressed an interest in having the flexibility to revisit the proposed action in the near-term as the Pacific sardine resource and the fisheries and markets that rely on it are dynamic and difficult to predict.

At the April 2005 Council meeting the Council adopted seven of the nine alternatives and sent those to the Team for further analysis. Below is a summary of the seven forwarded alternatives given to the Team for analysis including both a no action alternative and a status quo alternative. If the Council chose to take no action, the allocation framework would revert to original FMP (64 FR 69888, December 15, 1999) formula that was in place before the regulatory amendment (69 FR 8572, February 25, 2003) was implemented in 2003. Under status quo the Council would have chosen to take action to extend the interim allocation. The order of alternatives does not indicate rank or priority. All alternatives (except No Action) used Point Arena, California (39° N. lat.) as the dividing line between the allocation subareas. In order to present the alternatives in a clear and comparable fashion the descriptions for the fishing season, the initial allocation, and reallocations made at different points during the fishing season are summarized in bullet form.

No Action: FMP Allocation Framework

The allocation subareas are divided at Point Piedras Blancas, California (35° 40′ N. lat.).

Season: January 1 – December 31

Initial allocation: On January 1, 33 percent of the harvest guideline is allocated to the Subarea A (north, which includes Monterey) and 66 percent to the Subarea B (Southern California).

Reallocation: On October 1, remaining unharvested portion of the harvest guideline is pooled and reallocated 50 percent to Subarea A (north) and 50 percent to Subarea B (south).

Status Quo: Interim Allocation Framework

Season: January 1 – December 31

Initial allocation: On January 1, 33 percent of the harvest guideline is allocated to the Subarea A (north) and 66 percent to Subarea B (south).

Reallocation: On September 1, 20 percent of the remaining unharvested portion of the harvest guideline is reallocated to the Subarea A (north) and 80 percent to Subarea B (south).

Second reallocation: On December 1, the remaining unharvested portion of the harvest guideline is reallocated coastwide.

Alternative 1: Coastwide Allocation In Two Periods

Season: January 1 – December 31

Initial allocation: On January 1, 50 percent of the harvest guideline is allocated coastwide.

Reallocation: On July 1, the remaining harvest guideline (50 percent plus any unharvested portion from the initial allocation) is allocated coastwide.

Alternative 2: Rejected by the Council

Alternative 3: Coastwide Allocation In Three Periods

Season: January 1 – December 31

Initial allocation: On January 1, 40 percent of the harvest guideline is allocated coastwide.

Reallocation: On July 1, 40 percent of the harvest guideline (plus any unharvested portion from the initial allocation) is allocated coastwide.

Second reallocation: On October 1, 20 percent of the harvest guideline (plus any unharvested portion from the first reallocation) is reallocated coastwide.

Alternative 4: Allocation Formula Depends on the Size of the Harvest Guideline

Season: January 1 – December 31

(a) The coastwide harvest guideline is greater than 100,000 mt:

Initial allocation: On January 1, 40 percent of the coastwide harvest guideline is allocated to the Subarea A (north) and 60 percent to the Subarea B (south).

Reallocation: On September 1, the remaining unharvested portion of the harvest guideline is pooled and allocated coastwide.

(b) The coastwide harvest guideline is less than 100,000 mt:

Initial allocation: On January 1, 33 percent of the coastwide harvest guideline is allocated to Subarea A (north) and 66 percent to the Subarea B (south).

Reallocation: On September 1, the remaining unharvested portion of the coastwide harvest guideline is pooled and 20 percent is allocated to Subarea A (north) and 80 percent to the Subarea B (south).

Second reallocation: On November 1, any remaining unharvested portion of the harvest guideline is again pooled and reallocated coastwide.

Alternative 5: Rejected by the Council

Alternative 6: Transfer of Unused Allocations Between Subareas

Season: January 1 – December 31

Initial allocation (for 2006 only): On January 1, 40 percent of the harvest guideline is allocated to the Subarea A (north) and 60 percent to the Subarea B (south).

Reallocation: On September 1, the remaining harvest guideline is pooled and allocated coastwide.

Transfer Rules For Computing Subsequent-Year Allocations

After the initial year (2006) these rules dictate the allocations to each subarea in each subsequent year:

Rule 1: The transfer of a portion of the harvest guideline from one subarea to the other, for the purpose of recomputing allocation percentages for the next year, occurs if the portion of a subarea's allocation remaining uncaught at the end of the year is greater than the transfer limits described in Rule 2.

Rule 2: If the harvest guideline is greater than 100,000 mt, the transfer amount will be equal to 10 percent of the coastwide harvest guideline for that year. When the coastwide harvest guideline is 100,000 mt or less, the transfer amount will be 5,000 mt.

Rule 3: The transfer amount is applied to the current-year allocation for each subarea. The resulting numerical values are then converted to percentages of the current-year coastwide harvest guideline and used to determine the initial allocation for the following year.

Rule 4: No subarea may initially be allocated more than 75 percent of the coastwide harvest guideline.

Rule 5: The September 1 coastwide reallocation always applies.

Alternative 7: Equal Reallocation

Season: January 1 December 31

Initial allocation: On January 1, 33 percent of the harvest guideline is allocated to the Subarea A (north) and 66 percent to the Subarea B (south).

Reallocation: On September 1, remaining harvest guideline is pooled and 50 percent of the harvest guideline is allocated to the Subarea A (north) and 50 percent to the Subarea B (south).

Second Reallocation: On November 1, any remaining unharvested portion of the harvest guideline is again pooled and reallocated coastwide.At the June 2005 Council meeting in Foster City, CA, the Council adopted a preferred option for the allocation of Pacific sardine that creates a seasonal, coastwide allocation scheme. This preferred alternative is a modified version of Alternative 3, which provides the following allocation formula for the non-tribal share of the harvest guideline: Coastwide Allocation In Three Periods

Season: January 1 – December 31

Initial allocation: On January 1, 35 percent of the harvest guideline is allocated coastwide.

Reallocation: On July 1, 40 percent of the harvest guideline (plus any unharvested portion from the initial allocation) is allocated coastwide.

Second reallocation: On September 15, 25 percent of the harvest guideline (plus any unharvested portion from the first reallocation) is reallocated coastwide.

The Council also recommended a review of the allocation formula in 2008.

Public comments on Amendment 11 must be received by December 27, 2005, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 11. A proposed rule to implement Amendment 11 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation to implement Amendment 11 in the near future.

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

Dated: October 24, 2005.

Ann M. Lange,

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

[FR Doc. 05–21561 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 208
Friday, October 28, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program: Title VI Civil Rights Collection Reports

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is soliciting public comment on a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0025, Civil Rights Title VI Collection Reports—Forms FNS–191 and FNS–101, for the Commodity Supplemental Food Program, the Food Distribution Program on Indian Reservations, and the Food Stamp Program.

DATES: Comments on this notice must be received by December 27, 2005.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the 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.

All comments will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Civil Rights Title VI Collection Reports—FNS–191 and FNS–101.

OMB Number: 0584–0025.

Expiration Date: December 2005.

Type of Request: Revision of a currently approved collection.

Abstract: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–7, prohibits discrimination on the basis of race, color, and national origin in programs receiving Federal financial assistance. Department of Justice (DOJ) regulations, 28 CFR 42.406, require all Federal agencies to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI.

For purposes of the Information Collection Notice only, the Food and Nutrition Service (FNS) employs program terminology in place of the standard Title VI terminology adopted by the U.S. Department of Agriculture (USDA) and codified at 7 CFR 15.2. Thus, ''State agencies,'' ''local agencies,'' and/or ''operators'' are the program entities responsible for fulfilling the data collection requirements associated with ''primary recipients'' and/or ''recipients'' as defined by Title VI. Moreover, the program terms ''respondents,'' ''applicants,'' and/or ''participants'' refer to the ''potential beneficiaries,'' ''applicant beneficiaries,'' and/or ''actual beneficiaries'' of Federal financial assistance as defined by Title VI.

In order to conform with the statutory mandates of Title VI of the Civil Rights Act of 1964, DOJ regulations, and USDA regulations on nondiscrimination in Federally assisted programs, the USDA's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of persons receiving benefits from FNS food assistance programs.

In all three programs, State and local agencies collect racial/ethnic information on the benefits application form that applicants may complete and file manually or electronically. The application form must clearly indicate that the information is voluntary and that the race and ethnic information will not affect an applicant's eligibility or level of benefits. It must also state that the reason for the collection of the information is to assure that program benefits are distributed without regard to race, color or national origin. All three programs allow the individual to self-identify his or her racial/ethnic status on the application. Visual observation by a program representative is used to collect the data when the individual does not self-identify. In either case the information is recorded on the application form and entered into the agency's information system. The Federal reporting forms do not identify individual participants.

Local agencies use the two forms referenced above (*i.e.*, the FNS–191 and FNS–101) to report data on the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), and the Food Stamp Program (FSP) to FNS as explained below. FNS' data collection requirement for operators is found in the regulations for the CSFP at 7 CFR part 247.29(b), and for the FSP at 7 CFR part 272.6(g); the requirement for the FDPIR is found in FNS Handbook 501.

All State or local agencies must submit the appropriate form in order to receive benefits and comply with applicable legislation. If a State or local agency does not comply voluntarily, the State or local agency is subject to fund termination, suspension, or denial, or to judicial action.

CSFP local agencies complete the FNS–191 for the CSFP. FNS requires local agencies to provide annually the actual number and racial/ethnic designations of women, infants,

children and elderly who receive CSFP benefits during the month of April.

FSP and FDPIR State, local or Tribal agencies complete the FNS–101. FNS requires State, local or Tribal agencies to report annually the actual number and racial/ethnic designation of households who receive FDPIR and/or FSP benefits in the month of July.

On October 30, 1997, OMB issued revised standards for the classification of Federal data on race and ethnicity in a notice in the **Federal Register** (62 FR 58782). The OMB standards revise the racial and ethnic categories and require that respondents be offered the option of selecting one or more racial designations. On November 27, 2002, FNS published a proposed rule (67 FR 70861) to codify a general requirement for the new racial and ethnic data collection and reporting requirements and which would implement the new data collection and reporting for the FSP. On the same day, FNS published a Notice (67 FR 70916) on the proposed information collection requirements for CSFP, FDPIR, and FSP for public comment. The comment period for both the proposed rule and the Notice ended on January 27, 2003. FNS received comments on the proposed rule and considered them in writing the final rule. A final rule for the FSP is in the final stages of clearance. Once the final rule is published, FNS plans to implement the new information collection and reporting for all three programs.

The current OMB approval of this information collection will expire on December 31, 2005. FNS had planned to publish the final rule in the latter half of 2005. However, the clearance was not completed within our expected timeframe. In order to ensure that we remain in compliance with the Paperwork Reduction Act, FNS is providing a comment period for extending the current information collection for CSFP, FDPIR, and FSP. After the final rule has been published, FNS will formally announce the effective date(s) for each of the affected programs through implementing memoranda as appropriate and will provide copies of the revised forms at that time.

Burden Estimate

Respondents: Local agencies that administer the CSFP, FDPIR, and FSP.

Number of Respondents: 2,867 (144 for CSFP, 110 for FDPIR, and 2,613 for FSP).

Estimated Number of Responses per Respondent: Form FNS–191: 144 local CSFP agencies once a year. Form FNS–101: 110 local FDPIR agencies and 2,613 local FSP agencies once a year.

Estimate of Burden: Form FNS–191: The local CSFP agencies submit Form FNS–191 at an estimate of 1.92 hours per respondent, or 276.48 total hours. There is an additional recordkeeping burden of .08 hours per respondent for maintaining the responses, or 11.52 hours. Total burden is 288 hours.

Form FNS–101: The local FDPIR and FSP agencies submit Form FNS–101 at an estimate of 2.17 hours per respondent, or 5,908.91 hours. There is an additional burden of .08 hours per respondent for maintaining the responses, or 217.84 hours. Total burden is 6,126.75 hours.

Estimated Total Annual Burden on Respondents: The revised annual reporting and recordkeeping burden for OMB No. 0584–0025 is estimated to be 6,414.75 hours, a reduction of 249.25 hours. The burden reduction is due to the decrease in the number of CSFP, FDPIR, and FSP agencies that will complete a report.

Dated: October 26, 2005.

George A. Braley,

Associate Administrator.

[FR Doc. 05–21630 Filed 10–27–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–031N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on November 15–16, 2005. At this meeting, the Agency will present and seek input on matters it will address in moving to a more risk-based approach to inspection as well as how to use data to enhance the effectiveness and the efficiency of this approach. Subcommittees will also meet on November 15, 2005, to discuss issues covered during the full committee session.

DATES: The full Committee will hold a public meeting on Tuesday, November 15 and Wednesday, November 16, 2005, from 8:30 a.m. to 2 p.m. Subcommittees will hold open meetings on Tuesday, November 15, 2005, from 2 p.m. to 6 p.m.

ADDRESSES: All Committee meetings will take place in the conference room at the south end of the USDA cafeteria located in the South Building, 1400 Independence Avenue, SW. A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/OPPDE/NACMPI.* FSIS welcomes comments on the topics to be discussed at the public meeting. Comments may be submitted by any of the following methods:

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, United States Department of Agriculture (USDA), Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.* All submissions received must include the Agency name and docket number 05–031N. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 690–6522 or e-mail *Robert.tynan@fsis.usda.gov* and Sonya L. West for meeting information at (202) 690–1079, FAX (202) 690–6519, or e-mail *sonya.west@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than November 4, 2005, at the numbers above or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2005, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, and 301(a)(3), (a)(4), and (c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), (a)(4), and (c)) and sections 5(a)(3), (a)(4), and (c), 8(b); and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), (a)(4), and (c); 457(b), and 460(e)).

The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn

from representatives of consumer groups, producers, processors and marketers from the meat, poultry and egg product industries, state government officials, and academia. The current members of the NACMPI are: Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Mr. Darin Detwiler, Lake Washington School District; Mr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, Attorney; Mr. Mike Finnegan, Montana Department of Agriculture; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Andrea Grondahl, North Dakota Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Elizabeth Krushinskie, U.S. Poultry & Egg Association; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

The Committee will break up into subcommittees to deliberate on specific issues and make recommendations to the whole Committee. The Committee makes recommendations to the Secretary of Agriculture.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public, and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service that 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 in eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done in Washington, DC on October 25, 2005.

Barbara J. Masters,

Administrator.

[FR Doc. 05–21567 Filed 10–27–05; 8:45 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: November 27, 2005.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Catering Service, Military Entrance Processing Station, 111 W. Huron Street, Buffalo, New York.

NPA: Phoenix Frontier, Inc., Buffalo, New York.

Contracting Activity: Directorate of Contracting, Fort Knox, Kentucky.

Service Type/Location: Custodial Services, West Point Gym, Building 705–C Barry Road, West Point Middle School, Building 705–A Barry Road, West Point, New York.

NPA: Occupations, Inc., Middletown, New York.

Contracting Activity: Directorate of Contracting, West Point, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5977 Filed 10–27–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on brass sheet and strip from Germany. On the basis of the notice of intent to participate, adequate substantive responses and rebuttal comments filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'') and section 351.218(e)(2)(i) of the Department's regulations. As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Preliminary Results of Review.''

EFFECTIVE DATE: October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman, Brandon Farlander, or David Goldberger, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC, 20230; telephone: 202–482–3534, 202–482–0182, and 202–482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2005, the Department published its notice of initiation of the second sunset review of the antidumping duty order on brass sheet and strip from Germany, in accordance with section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 16800 (April 1, 2005) (''*Notice of Initiation*'').

The Department received Notices of Intent to Participate on behalf of Heyco Metals, Inc., Olin Corporation - Brass Group, Outokumpu American Brass, PMX Industries, Inc., Revere Copper Products, Inc., Scott Brass, International Association of Machinist and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United Steelworkers of America AFL–CIO/CLC (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as manufacturers of a domestic–like product in the United States, and unions whose workers are engaged in the production of a domestic–like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). The Department received a complete substantive response from respondent interested parties, Wieland–Werke AG (''Wieland''), Prymetall Gmbh & Co. KG (''Prymetall''), and Schwermetall Halbzeugwerk GmbH & Co. KG (''Schwermetall'') (collectively ''the respondent interested parties''), within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations.

On May 4, 2005, the Department received a request from domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive response of the respondent interested parties. Pursuant to section 351.302(b) of the Department's regulations, domestic and respondent parties were granted an extension to file rebuttal comments to the substantive responses until May 13, 2005. On May 17, 2005, the Department received an objection to domestic interested parties' rebuttal comments.

On May 24, 2005, the Department initially determined that respondent interested parties did not account for more than 50 percent of exports by volume of the subject merchandise and, therefore, did not submit an adequate substantive response to the Department's *Notice of Initiation*. *See* Memorandum to Ronald Lorentzen, Acting Director, Office of Policy, from Kelly Parkhill entitled, ''Adequacy Determination: Sunset Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany,'' (May 24, 2005). On June 13, 2005, the Department extended the deadline for comments and rebuttals on its adequacy determination to June 20 and June 27 respectively. On June 10 and 20, 2005, the Department received comments from domestic interested parties concerning the Department's adequacy determination. On June 20, 2005, the Department received comments from respondent interested parties concerning the Department's adequacy determination. On June 27, 2005, the Department received rebuttal comments from domestic interested parties concerning the Department's adequacy determination.

On July 27, 2005, the Department published a notice of extension of time limits for its final results of expedited review until on or about October 18, 2005. *See Brass Sheet and Strip from Germany, Brazil, and France: Extension of Final Results of Expedited Sunset Reviews of the Antidumping and Countervailing Duty Orders*, 70 FR 43395 (July 27, 2005).

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value basis, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On August 12, 2005, the Department reversed its initial adequacy determination and found that the respondent interested parties accounted for more than 50 percent of exports by volume of the subject merchandise from Germany to the United States. *See* Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from Susan H. Kuhbach entitled, ''Adequacy Determination in Antidumping Duty Sunset Review of Brass Sheet and Strip from Germany,'' (August 12, 2005). In accordance with section 351.218(e)(2)(i) of the Department's regulations, the Department determined to conduct a full sunset review of this antidumping duty order.

The final results in the full sunset review of this antidumping duty order are scheduled on or before February 27, 2006.

Scope of the Order

The product covered by this order is brass sheet and strip, other than leaded and tinned. The chemical composition of the covered product is currently defined in the Copper Development

Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. This order does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the product covered by this order has a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound–on-reels (traverse wound), and cut–to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7409.21.00 and 7409.29.00. The HTSUS numbers are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany; Preliminary Results,'' from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 18, 2005 (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Department Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''October 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on brass sheet and strip from Germany is likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturers/Producers/Exporters	Weighted–Average Margin (Percent)
Wieland–Werke AG	3.81
All Others	7.30

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than February 27, 2006.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752,and 777(i)(1) of the Act.

Dated: October 17, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5987 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–809

Certain Forged Stainless Steel Flanges from India; Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 3, 2005, the Department of Commerce (the Department) published the preliminary results of new shipper review of certain forged stainless steel flanges from India. The review covers one manufacturer/exporter, Hilton Forge (Hilton). Although interested parties had an opportunity to comment on our preliminary results, we received no comments. The Department has not made any changes in its analysis following publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2005, the Department published its preliminary results of new shipper review of certain forged stainless steel flanges from India. *See Certain Forged Stainless Steel Flanges from India; Preliminary Results of New Shipper Review*, 70 FR 44560 (August 3, 2005). No party submitted comments on the preliminary results.

Period of Review

The period of review (POR) is February 1, 2004, through July 31, 2004.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Final Results of Review

We determine that a margin of 0.89 percent exists for Hilton for the period February 1, 2004, through July 31, 2004.

Assessment

The Department will determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties

on all appropriate entries, pursuant to 19 CFR 351.212(b). We have calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for each importer. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Hilton of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash–deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(1) and 751 (a)(2)(C) of the Tariff Act of 1930, as amended (the Act):

• for subject merchandise manufactured and exported by Hilton the cash deposit rate shall be 0.89 percent;

• for subject merchandise exported by Hilton but not manufactured by Hilton the cash–deposit rate will continue to be the ''all others'' rate or the rate applicable to the manufacturer, if so established;

• the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding;

• if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated;

• if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less–than-fair–value investigation. (*See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994)).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of 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 sanctionable violation.

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–21580 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles (''HFHTs'') from the People's Republic of China (''PRC''). This review covers the period February 1, 2004 through January 31, 2005.

EFFECTIVE DATE: October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Hallie Noel Zink, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Background

On March 23, 2005, the Department published a notice of initiation of a review of HFHTs from the PRC covering the period February 1, 2004 through January 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

Extension of Time Limit of Preliminary Results

The Department determines that completion of the preliminary results of this review within the 245-day period is not practicable. This review covers four companies, and to conduct the sales and factor analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing methods and corporate relationships. The Department also requires additional time in order to analyze complicated potential affiliation issues between some of the companies participating in this review.

Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until February 28, 2006. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 21, 2005.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–5985 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–829]

Stainless Steel Bar from Italy: Preliminary Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Italy. The period of review is March 1, 2004, through February 28, 2005. This review covers imports of stainless steel bar from one producer/exporter, UGITECH, S.A.

We have preliminarily found that UGITECH, S.A. did not make shipments of the subject merchandise to the United States during the period of review and, therefore, we are preliminarily rescinding this antidumping duty administrative review. We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: October 28, 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 March 7, 2002, the Department of Commerce (''the Department'') published an antidumping duty order on stainless steel bar (''SSB'') from Italy. *See Notice of Antidumping Duty Order: Stainless Steel Bar from Italy*, 67 FR 10384 (March 7, 2002). On October 10, 2003, the Department published an amended antidumping duty order on SSB from Italy. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660 (October 10, 2003).

On March 1, 2005, the Department published in the **Federal Register** a notice of opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from Italy. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 70 FR 9918 (March 1, 2005). On March 31, 2005, Carpenter Technology Corp., Valbruna Slater Stainless, Inc., Electralloy Corp., a Division of G.O. Carlson, Inc. (collectively, ''the petitioners''), requested an administrative review of imports of the subject merchandise produced by UGITECH, S.A. (''UGITECH''), an Italian exporter/producer of the subject merchandise.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on April 22, 2005. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005). The period of review (''POR'') is March 1, 2004, through February 28, 2005.

On April 22, 2005, the Department issued an antidumping duty questionnaire to UGITECH. On May 31, 2005, UGITECH informed the Department that it made no entries of subject merchandise during the POR and requested that the Department rescind the instant review with respect to UGITECH, in accordance with 19 CFR 351.213(d)(3). On June 30, 2005, the petitioners submitted comments on UGITECH's May 31, 2005, submission and requested that the Department investigate further UGITECH's rescission request. On August 16, 2005, UGITECH responded to the petitioners' comments. On September 14, 2005, the petitioners submitted additional comments.

Scope of the Order

For purposes of this order, the term ''SSB'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Preliminary Rescission of Administrative Review

Pursuant to section 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, in whole or in part, with respect to a particular exporter or producer, if the Department concludes that there were no entries, exports, or sales of the subject merchandise during the POR. *See e.g.*, *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review and Rescission of Review*, 70 FR 46480 (March 10, 2005). On May 31, 2005, UGITECH claimed that it did not export subject merchandise to the United States during the instant POR. The Department conducted a U.S. Customs and Border Protection (''CBP'') inquiry. *See* Memorandum to the File, ''U.S. Customs and Border Protection Data,'' dated July 12, 2005. The result of the CBP inquiry confirmed UGITECH's claims that it made no entries of subject merchandise during the POR. Therefore, the Department is preliminarily rescinding this administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of

publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and777(I)(1) of the Act.

Dated: October 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5984 Filed 05–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Notice of Correction to the Preliminary and Final Results of the Eighth Countervailing Duty Administrative Review: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander at (202) 482–0182 or Marc Rivitz at (202) 482–1382; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Correction

On August 30, 2004, the Department published in the **Federal Register** a notice of initiation for the eighth administrative review (January 1, 2003 through December 31, 2003) of certain pasta from Italy (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004) (''Initiation Notice'')). In the published version of that notice, the Department initiated its review of producer Corticella Molini e Pastifici S.p.A./Pasta Combattenti S.p.A. However, in *Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005) (''Preliminary Results'') and Certain Pasta from Italy: Final Results of the Eighth Countervailing Administrative Review, 70 FR 37084 (June 28, 2005) (''Final Results''), the producer was incorrectly referred to as Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A. The correct name is Corticella Molini e Pastifici S.p.a./Pasta Combattenti S.p.a., as indicated in the initiation notice. *See Initiation Notice*. We are issuing this notice to correct the name that appeared in the Preliminary Results and Final Results.

We note that we attributed any subsidies received by both Corticella Molini e Pastifici S.p.a. and Pasta Combattenti S.p.a to the combined sales of these companies. *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR 45676 (July 30, 2004). Therefore, the Department will issue liquidation instructions assigning to both Corticella Molini e Pastifici S.p.a. and Pasta Combattenti S.p.a. the calculated rate of 0.0 percent for this segment of the proceeding.

This notice is issued and published pursuant to section 777(i)(1) of the Act.

Dated: October 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5986 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Final Results of Expedited Sunset Review: Welded Carbon Steel Standard Pipe from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order (''CVD'') on welded carbon steel standard pipe from Turkey pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or David Goldberger, AD/CVD Operations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–4136, respectively.

SUPPLEMENTAL INFORMATION:

Background

On July 1, 2005, the Department initiated a sunset review of the CVD order on welded carbon steel standard pipe from Turkey pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). The Department received a Notice of Intent to Participate from the following domestic interested parties: Allied Tube and Conduit, IPSCO Tubulars, Leavitt Tube Company, Maverick Tube Corporation, Northwest Pipe Company, Sharon Tube Company, Western Tube and Conduit, and Wheatland Tube Company (collectively, ''domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

The Department received a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In the substantive response dated July 29, 2005, Copperweld Corporation and Maruichi American Corporation, two other domestic interested parties, expressed their intent to participate in the sunset review. The Department, however, did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this CVD order.

Scope of the Order

The merchandise subject to this CVD order is certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (''pipe and tube''). These products are currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided

for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated October 21, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net Countervailable Subsidy (percent)
Bant Boru[1]	0.00
Borusan Group[2]	0.68
Erbosan[3]	2.89
Yucel Boru Group[4]	0.84
All Others	2.90

[1] Bant Boru Sanayi ve Ticaret A.S.

[2] Borusan Group is Borusan Birlesik Boru Fabrikalari A.S. (''BBBF'') and Borusan Ihracat Ithalat ve Dagitim A.S. (''Borusan Dagitim'').

[3] Erciyas Boru Sanayii ve Ticaret A.S.

[4] Yucel Boru and its affiliated companies: Cayirova Boru Sanayi ve Ticaret A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5983 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102505C]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held November 14 – 17, 2005. The Southeastern Data and Review (SEDAR) Committee will be convened in a closed session conference call on November 9, 2005.

ADDRESSES: These meetings will be held at the Ramada Plaza Beach Resort, 1500 Miracle Strip Parkway, SE, Fort Walton Beach, FL 32548.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, November 16, 2005

8:30 a.m. – Convene.

8:45 a.m. – 9 a.m. – Appointment of Committee Members.

9 a.m. – 11:30 a.m. – Receive public testimony on (a) Final Reef Fish Amendment 26 (Red Snapper Individual Fishing Quota (IFQ), (b) Final Red Grouper Regulatory Amendment, and (c) Exempted fishing permits (if any).

1 p.m. – 3 p.m. – Receive the Reef Fish Management Committee Report.

3 p.m. – 5 p.m. – Receive the joint Reef Fish/Shrimp Management Committees Report.

5 p.m. – 5:30 p.m. – Receive the Advisory Panel (AP) Selection Committee Report (Closed Session).

5:30 p.m. – 5:45 p.m. – Receive the SEDAR Committee Report (Closed Session).

Thursday, November 17, 2005

8:30 a.m. – 8:45 a.m. – Receive the AP Selection Committee Report.

8:45 a.m. – 9 a.m. – Receive the SEDAR Committee Report.

9 a.m. – 9:30 a.m. – Receive the Budget/Personnel Committee Report.

9:30 a.m. – 9:45 a.m. – Receive the Sustainable Fisheries/Ecosystem Committee Report.

9:45 a.m. – 10 a.m. – Receive the Law Enforcement Committee Report.

10 a.m. – 10:45 a.m. – Receive the Administrative Policy Committee Report.

10:45 a.m. – 11 a.m. – Receive the joint Reef Fish/Mackerel/Red Drum Committees Report.

11 a.m. – 11:15 a.m. – Receive the Council Chairs Meeting Report.

11:15 a.m. – 11:30 a.m. – Receive the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Report.

11:30 a.m. – 11:45 a.m. – Receive the Enforcement Reports.

11:45 a.m. – 12 noon – Receive the Regional Administrator's Report.

12 noon – 12:30 p.m. – Receive the State Director's Reports.

12:30 p.m. – 12:45 p.m. – Other Business.

Committee

Wednesday, November 9, 2005

2 p.m. – The SEDAR Committee will be convened in a closed session conference call to discuss participants for the SEDAR 10 Workshops for Gag Grouper and develop recommendations for Council. Immediately following, the AP Selection Committee will convene via closed session conference call to discuss appointments to the Ad Hoc Grouper IFQ AP and make recommendations to Council.

Monday, November 14, 2005

8:30 a.m. – 10 a.m. – The Budget/Personnel Committee will meet to review Family Medical Leave Act (FMLA) revisions to the Statement of Organization Practices and Procedures (SOPPS) and make recommendations to Council.

10 a.m. – 10:30 a.m. – The Committees will hear a presentation on the NOAA Fishery Capacity.

10:30 a.m. – 12 noon – The joint Reef Fish/Mackerel/Red Drum committee will meet to discuss Aquaculture Amendment Alternatives.

1:30 p.m. – 5:30 p.m. – The Reef Fish Management Committee will review

public hearing summaries, public letters, AP recommendations, Scientific and Statistical Committee (SSC) recommendations, Federal recommendations and committee recommendations on Final Reef Fish Amendment 26 for a Red Snapper IFQ program and make recommendations to Council. The Committee will then review a draft Red Grouper Regulatory Amendment for the Recreational Sector. The Committee will hear a report on the Industry Business Plan for the Longline Buy-Back Program.

Tuesday, November 15, 2005

8:30 a.m. – 12 noon – The joint Reef Fish/Shrimp Management Committees will review a scoping document for a joint Reef Fish/Shrimp amendment targeted at reducing shrimp trawl by-catch; by-catch in the directed reef fish fishery; and effort limitation alternatives for the shrimp fishery. The Committees will then review an Options Paper for a Red Snapper Regulatory Amendment to set total allowable catch (TAC) & Measures which will include discussion of Red Snapper Management Scenarios and discussion of the SSC recommendations. The Committees will review a draft Regulatory Amendment on By-catch Reduction Devices (BRDs) certification criterion and certification of new BRDs.

1:30 p.m. – 2:30 p.m. – The joint Reef Fish/Shrimp Management Committee will reconvene to complete their work.

2:30 p.m. – 4:30 p.m. – The Sustainable Fisheries/Ecosystem Committee will hear a report on the Ecosystem Workshops held in August 2005, hear a status report on the preparation of an Ecosystem Amendment, and discuss the effects of Hurricane Katrina on the Ecosystem.

4:30 p.m. – 5:30 p.m. – The Law Enforcement Committee will review the Operations Plan for 2006 and discuss other issues from the October Law Enforcement Advisory Panel (LEAP) meeting.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 25, 2005.

Tracey L. Thompson,

[FR Doc. E5–5981 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102505D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Monday, November 14, 2005, from 1 p.m. until business for the day is completed. The Committee meeting will reconvene Tuesday, November 15, 2005, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The Committee meeting will be held at a location to be determined and announced in the near future. For more information, contact the Council office at (503) 820–2280 or look on the Council Web site at *http://www.pcouncil.org*.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to develop options for allocations and other management measures for the 2007–08 Pacific Coast groundfish fishery and to consider intersector allocation issues in support of various Council initiatives. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of depleted species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. No management actions will be decided by the Committee. The Committee's role will be development of recommendations for consideration by the Council at its March and April 2006 meetings in Seattle, WA and Sacramento, CA, respectively.

Although non-emergency issues not contained in the meeting agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 25, 2005.

Tracey L. Thompson,

[FR Doc. E5–5982 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice: Request for Nominations, Spectrum Management Advisory Committee

AGENCY: National Telecommunications and Information Administration

ACTION: Notice and Request for Nominations

SUMMARY: Pursuant to an Executive Memorandum, under the Federal Advisory Committee Act and consistent with the National Telecommunications and Information Organization Act, the Secretary of Commerce has established the Spectrum Management Advisory Committee (Committee). The Committee will provide advice to the Assistant Secretary for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA) on spectrum management matters. NTIA is requesting nominations for members to the Committee for terms beginning in 2005.

DATES: Nominations must be postmarked or electronically transmitted on or before November 28, 2005.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to the attention of Meredith Attwell, Designated Federal Officer, by mail to Office of the Assistant Secretary, National Telecommunications and Information Administration, 1401 Constitution Avenue N.W., Room 4898, Washington, DC 20230; by facsimile transmission to (202) 501–0536; or by electronic mail to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Meredith Attwell at (202) 482–2695 or *mattwell@ntia.doc.gov*; or Joe Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov*.

SUPPLEMENTARY INFORMATION: On November 29, 2004, the President issued a Memorandum to the Heads of Executive Departments and Agencies on the subject of ''Spectrum Management for the 21st Century.''[1] Among other things, the Executive Memorandum directed the heads of the executive departments and agencies to implement the recommendations contained in two Commerce Department reports to the President identifying improvement in U.S. spectrum management.[2] The first recommendation in *Report 2* called for the establishment of a federal advisory committee within the National Telecommunications and Information Administration (NTIA).[3]

Pursuant to the Executive Memorandum, the Secretary of Commerce established the Spectrum Management Advisory Committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee will report to the Assistant Secretary for Communications and Information. It will advise the Assistant Secretary on a broad range of issues regarding spectrum policy and on needed reforms to domestic spectrum policies and management to enable timely implementation of evolving spectrum-dependent technologies and services to benefit the public. The Committee will function solely as an advisory body in compliance with the FACA. The Committee's Charter appears on NTIA's website at http://www.ntia.doc.gov.

The Secretary of Commerce intends to appoint representatives from a balanced cross-section of stakeholder interests in spectrum management and policy reform, including non-federal government users, state, regional and local sectors, technology developers, and manufacturers, academia, consumer groups, and service providers with customers in both domestic and international markets. The Department of Commerce seeks high level individuals with broad expertise in and capable of representing those sectors and interests on policy issues relevant to the Committee. Members will be appointed for a two-year term and may be reappointed for additional terms. Members of the Committee will be appointed as Special Government Employees and will serve without compensation.

Nominations should include a resume or *curriculum vita*, and should also include a statement summarizing the qualifications of the nominee and identifying the sector or interest (if individual) for which the nominee has expertise.

Dated: October 25, 2005.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 05–21542 Filed 10–27–05; 8:45 am]

BILLING CODE 3510–60–S

[1] *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004)(Executive Memorandum).

[2] *See* Department of Commerce, *Spectrum Policy for the 21st Century -- The President's Spectrum Policy Initiative: Report 1, Recommendations of the Federal Government Spectrum Task Force* (June 2004); Department of Commerce, *Spectrum Policy for the 21st Century -- The President's Spectrum Policy: Report 2, Recommendations from State and Local Governments and Private Sector Responders* (June 2004)(*Report 2)*, available at http://www.ntia.doc.gov/reports/specpolini/presspecpolini__report2__06242004.pdf.

[3] ''The National Telecommunications and Information Administration (NTIA) should establish the Department of Commerce Spectrum Management Advisory Committee, consistent with the Federal Advisory Committee Act [5 U.S.C. App.2] and the NTIA Organization Act [47 U.S.C. § 904(b)].'' *Report 2* at ii, 14-15.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Composite Processing Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel Composite Processing technology as described in U.S. Patent 6,586,054; entitled ''Apparatus and method for selectively distributing and controlling a means for impregnation of fibrous articles''; Shawn Walsh. Any license shall comply with 35 U.S.C 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–21520 Filed 10–27–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Integrated Feasibility Report & Environmental Impact Statement for the Flood Damage Reduction Project, Bloomsburg, PA

AGENCY: Department of the Army; U.S. Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Baltimore District has prepared a Final Integrated Feasibility Report & Environmental Impact Statement (EIS) for the flood damage reduction project for the Town of Bloomsburg, in Columbia County, PA. The Final Integrated Feasibility Report investigated the potential environmental effects of an array of alternative plans based on reducing flood damages in Bloomsburg. The recommended alternative includes approximately 17,000 linear feet of levee/floodwall

systems with fourteen drainage structures, and nine closure structures, six of which incorporate limited road raisings.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Trulick, Study Manager, (410) 962–6715 or (800) 295–1610 or via e-mail at *jeff.trulick@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Town of Bloomsburg, PA, is located in Columbia County within the Middle Susquehanna River sub-basin. The Susquehanna River forms the Town's southern boundary, and Fishing Creek forms the northern and western boundary.

The primary water resources problem along the Susquehanna River at Bloomsburg is recurrent flooding. Recurrent flooding that occurs in the Bloomsburg study area is a result of the morphology of the Susquehanna River and the regional topography. When the Susquehanna River and a local tributary, Fishing Creek, simultaneously rise above flood stage, overbank flooding can cover up to 33 percent of the landmass within the Town of Bloomsburg's boundaries.

Flood damages are attributable to overbank flooding from the Susquehanna River and to flooding along Fishing Creek. Past flood events have resulted in extensive damages to structures and their contents and have threatened public safety. The Bloomsburg study area includes approximately 525 residential structures and 75 businesses.

The recommended flood damage reduction plan is the National Economic Development (NED) Plan with a Tropical Storm Agnes (440-year) level of protection from Susquehanna River flooding, and 100-year level of protection from Fishing Creek flooding. The alignment of the line of protection was refined based on physical, environmental, and economic criteria.

The project consists of a system of earthen levees, mechanically stabilized earth (MSE) floodwalls, concrete floodwalls, railroad and road closure structures and roadway relocations to provide ramps over the line of protection. Earthen levees are proposed for the majority of the line of protection, though MSE walls will be required along portions of Fishing Creek in both Bloomsburg and Fernville and a concrete floodwall (H-Pile wall) will be required along portions of Fishing Creek in Bloomsburg. Limited riprap will be used to protect the steep banks of Fishing Creek from bank crest to below the stream invert along the lower project reaches along Fishing Creek.

Permanent environmental impacts will include restricted views by the levee/floodwall system of Fishing Creek from Bloomsburg and Fernville, excavation and off-site disposal of approximately 4,500 cubic yards of hazardous, toxic and radioactive waste materials, conversion of approximately 11.5 acres of farmland designated as Prime Farmland or Additional Farmland of Statewide Importance to non-agricultural use, long-term loss of nearly 3,000 linear feet of riparian habitat along Fishing Creek, the loss of less than one acre of wetlands, and taking of residential homes and business structures within the levee/floodwall footprint.

USACE has distributed copies of the Final Integrated Feasibility Report and EIS to appropriate members of Congress, State and local government officials, Federal agencies, and other interested parties. Copies are available for public review at the following locations:

(1) Bloomsburg Public Library, 225 Market Street, Bloomsburg, PA 17815

(2) Bloomsburg University Library, 400 E. Second Street, Bloomsburg, PA 17815

You may also view the Final Integrated Feasibility Report and EIS in addition to related information on our Web page at *http://www.nab.usace.army.mil/publications/non-reg_pub.htm.*

The Final Integrated Feasibility Report and EIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations implementing NEPA (ER–200–2–2).

Jeff Trulick,

Study Manager, Civil Project Development Branch, Planning Division.

[FR Doc. 05–21522 Filed 10–27–05; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Scoping Meeting and Preparation of Draft Environmental Impact Statement for Widening of the Freeport Ship Channel in Freeport, Brazoria County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District intends to prepare a Draft Environmental Impact Statement (DEIS) to assess the social, economic and environmental effects of the proposed widening of portions of the Freeport Harbor Entrance and Jetty Channels. The DEIS will assess potential impacts of a range of alternatives, including the No Action and preferred alternatives. The Federal action is consideration of a Department of Army Permit application for work under section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), section 404 of the Clean Water Act (33 U.S.C. 1344) and section 103 of the Marine Protection Research and Sanctuary Act (33 U.S.C. 1413).

DATES: A public scoping meeting will be held on November 29, 2005 at 7 p.m.

ADDRESSES: The meeting will be held at the Freeport Community House, 1300 W. 2nd, Freeport, TX 77541.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Herczeg, Project Manager, by letter at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, by telephone at (409) 766–6389, or by e-mail at *bryan.a.herczeg@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare a DEIS on the proposed channel widening of portions of the Freeport Harbor Channel, which leads to Freeport Harbor, Freeport, Brazoria County, TX. The Brazos River Harbor Navigation District (Port of Freeport) proposes this project.

1. *Description of the Proposed Project:* The Port of Freeport is proposing to widen the Freeport Harbor Channel as follows:

a. From Channel Station 63+35, near the U.S. Coast Guard Station, to Channel Station 45+00, the channel will be widened gradually an additional 0 to 150 feet;

b. From Channel Station 45+00 to Channel Station 40+00, the Channel will be widened an additional 150 to 200 feet;

c. From 40+00, in the Jetty Channel to the end of the existing Entrance Channel, the channel will be widened by 200 feet, from the existing channel width of 400 feet to 600 feet;

d. The depth of the channel will be as at present, 47 feet in the Jetty Channel (45 feet project depth plus 2 feet advanced maintenance) and 49 feet in the Entrance Channel (45 feet project depth plus 2 feet advanced maintenance plus 2 feet allowable overdraft);

e. Approximately 3.2 million cubic yards (mcy) of dredged material will be

generated from the widening project; and

f. Approximately 300,000 cubic yards of dredged material will be used beneficially for beach nourishment on Quintana Beach and the remainder of the dredged material will be placed offshore approximately 2.5 miles off Quintana in approximately 40 feet of water.

2. *Scoping and Public Involvement Process:* A scoping meeting to gather information on the subjects to be studied in detail in the DEIS will be conducted on (see **DATES**). An informal open house, allowing for review of the proposed project and questions and answers, will be conducted between 5 and 7 p.m., prior to the scoping meeting.

3. *Significant Issues:* Issues associated with the proposed project to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, dredged material placement, the beneficial uses of dredged material, water quality, fish and wildlife values including threatened and endangered species; air quality; environmental justice; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; energy supply and natural resources; hazardous waste and materials; aesthetics; public health and safety; navigation; shoreline erosion and accretion; cumulative impacts, and the needs and welfare of the people.

4. *Technical Review and Consultation:* Several State and Federal Agencies will be invited to provide technical review of the DEIS. Those agencies include: The Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, the United States Coast Guard, Texas Commission on Environmental Quality, Texas General Land Office, Texas Parks and Wildlife Department and the Texas Department of Transportation.

5. *Additional Review and Consultation:* Additional review and consultation that will be incorporated into the preparation of this DEIS will include: Compliance with the Texas Coastal Management Program; protection of cultural resources under Section 106 of the National Historic Preservation Act; protection of navigation under the Rivers and Harbors Act of 1899; protection of water quality under section 401 of the Clean Water Act; protection of air quality under the Clean Air Act; and protection of endangered and threatened species under section 7 of the Endangered Species Act.

6. *Availability of the DEIS:* The Draft Environmental Impact Statement is projected to be available in September 2006. At this time the Galveston District plans to conduct a Public Hearing following the release of the DEIS.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–21521 Filed 10–27–05; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF THE INTERIOR

Office of Surface Mining

Fish and Wildlife Service

Final Programmatic Environmental Impact Statement for Mountaintop Mining and Valley Fills

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Office of Surface Mining and Fish and Wildlife Service, Interior; and West Virginia Department of Environmental Protection.

ACTION: Announcement of availability of Final Programmatic Environmental Impact Statement (FPEIS).

SUMMARY: The above agencies announce the availability of the FPEIS that considers developing policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources affected by mountaintop mining operations, and to environmental resources that could be affected by the size and location of excess spoil-disposal sites in valley fills within the Appalachian study area in West Virginia, Kentucky, Virginia, and Tennessee. This FPEIS was prepared as part of a settlement agreement that resolved the Federal claims brought in *Bragg* v. *Robertson, Civ. No. 2:98–0636 (S.D.W.Va.).*

This FPEIS was prepared consistent with the provision set forth in 40 CFR 1503.4(c) of the Council on Environmental Quality regulations implementing NEPA, which allow the agencies to attach an errata sheet to the statement instead of rewriting the draft statement and to circulate the errata, comments, responses, and the changes, rather than the entire document. The agencies are filing the entire statement with a new cover sheet as the FPEIS. The FPEIS is being made available by mail and can be viewed on the Internet at *http://www.epa.gov/region3/mtntop/index.htm.* The FPEIS can also be viewed at local offices of the above agencies and at selected local libraries. Copies of the FPEIS may be obtained by writing to the address listed below.

ADDRESSES: Send written requests for copies of the FPEIS to John Forren, U.S. Environmental Protection Agency (3EA30), 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: John Forren, U.S. Environmental Protection Agency, at (215) 814–2705; Katherine Trott, U.S. Army Corps of Engineers, at (202) 761–5542; Mike Robinson, U.S. Office of Surface Mining, at (412) 937–2882; Cindy Tibbott, U.S. Fish and Wildlife Service, at (814) 234–4090; or Russell Hunter, West Virginia Department of Environmental Protection, at (304) 926–0499.

Dated: October 20, 2005.

Gerald W. Barnes,

Chief, Operations, Directorate of Civil Works.

David Evans,

Director, Wetlands Division, Environmental Protection Agency.

Glenda H. Owens,

Deputy Director, Office of Surface Mining.

Marshall P. Jones, Jr.

Deputy Director, Fish and Wildlife Service.

[FR Doc. 05–21474 Filed 10–27–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings for a Draft Overseas Environmental Impact Statement/Environmental Impact Statement for the Undersea Warfare Training Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Overseas Environmental Impact Statement/Environmental Impact Statement (Draft

OEIS/EIS) to evaluate the construction and operation of a proposed Undersea Warfare Training Range. In accordance with NEPA and its implementing regulations, this notice announces the dates and locations of public hearings.

Open information sessions will precede the scheduled public hearing at each of the locations listed below and will allow individuals to review the data presented in the Draft OEIS/EIS. Navy representatives will be available during the information sessions to clarify information related to the Draft OEIS/EIS. The open information sessions are scheduled from 3:30 p.m. to 5:30 p.m. and from 6:30 to 7 p.m., followed by the public hearings from 7 p.m. to 9:30 p.m.

DATES: Public hearing dates are as follows:

1. Tuesday, November 15, 2005, 7 p.m. to 9:30 p.m., Chincoteague, VA.
2. Thursday, November 17, 2005, 7 p.m. to 9:30 p.m., Morehead City, NC.
3. Monday, November 21, 2005, 7 p.m. to 9:30 p.m., Jacksonville, FL.

ADDRESSES: Public hearing locations are as follows:

1. Chincoteague—Chincoteague Community Center, 6155 Community Drive, Chincoteague, VA 23336.
2. Morehead City—Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557.
3. Jacksonville—Wilson Center for the Arts, Florida Community College, Jacksonville South Campus, 119091 Beach Boulevard, Jacksonville, FL 32246.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Jenkins, Naval Facilities Engineering Command Atlantic, (Code EV21KJ), 6506 Hampton Boulevard, Norfolk, VA 23508; telephone: 757–322–4046; Fax: 757–322–4894.

SUPPLEMENTARY INFORMATION: The proposed action is to instrument a 1,713-square-kilometer (500-square-nautical-mile) area of the ocean with undersea cables and sensor nodes, creating an Undersea Warfare Training Range (USWTR), and to use the area for Anti-Submarine Warfare (ASW) training. Such training would typically involve up to three vessels and two aircraft using the range for any one training event. The instrumented area would be connected to the shore via a single trunk cable. The proposed action would require logistical support for ASW training, including the handling (launch and recovery) of exercise torpedoes (non-explosive) and submarine target simulators.

The Navy requires an instrumented undersea warfare training range to support worldwide deployment and current and future mission requirements in fulfillment of the U.S. world role and the Global War on Terror, and to counter the threat of modern diesel submarines. The proposed USWTR provides an environment that is consistent with real-world threat situations where training exercises can be conducted under safe and controlled conditions, as well as providing critically important real-time training feedback. The purpose of the proposed action is to enable the Navy to train effectively in an environment encompassing 37 to 274 meters (120 to 900 feet) water depth at a suitable location for Atlantic Fleet units.

The Draft OEIS/EIS reviews a thorough site selection process and describes in detail three reasonable siting alternatives located within existing east coast Operating Areas (OPAREAS). The action alternatives considered are Alternative/Site A in the Cherry Point OPAREA, Alternative/Site B in the Virginia Capes OPAREA, and Alternative/Site C in the Jacksonville OPAREA. These three potential sites, along with the No Action Alternative, are evaluated in the Draft OEIS/EIS. Site A in the Cherry Point OPAREA is the Navy's preferred alternative.

The potentially affected areas of the preferred site (in the Cherry Point OPAREA) and the alternate sites (within the Virginia Capes and Jacksonville OPAREAS) have been studied in detail to determine how installation of and operations on the proposed USWTR would potentially affect the marine and landside environments.

The Draft OEIS/EIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft OEIS/EIS have been distributed to the following libraries for public review:

1. Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, VA 23452.
2. Eastern Shore Public Library, 23610 Front Street, Accomac, VA 23301.
3. Chincoteague Island Library, 4077 Main Street, Chincoteague Island, VA 23336.
4. Carteret County Public Library, 210 Turner Street, Beaufort, NC 28516.
5. Onslow County Public Library, 58 Doris Avenue East, Jacksonville, NC 28540.
6. Jacksonville Public Library, Regency Square Branch, 9900 Regency Boulevard, Jacksonville, FL 32225.

An electronic copy of the Draft OEIS/EIS is also available for public viewing at: *http://projects.earthtech.com/USWTR/*. Single copies of the Draft OEIS/EIS and Executive Summary are available upon request by contacting Mr. Keith Jenkins at 757–322–4046.

Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Written comments can also be submitted during the information sessions preceding the public hearings. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft OEIS/EIS and will be addressed in the Final Overseas Environmental Impact Statement/Environmental Impact Statement (Final OEIS/EIS). Equal weight will be given to both oral and written statements.

In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or faxed to: Naval Facilities Engineering Command Atlantic, Attn: Mr. Keith Jenkins (Code EV21KJ), 6506 Hampton Boulevard, Norfolk, VA 23508; Fax 757–322–4894.

All written comments must be postmarked by December 28, 2005, to ensure they become part of the official record. All comments will be addressed in the Final OEIS/EIS.

Dated: October 20, 2005.

I.C. Le Moyne, Jr.

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–21511 Filed 10–27–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 27, 2005.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 24, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.
Title: Evaluation of Reading Comprehension Interventions.
Frequency: Semi-Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 700.
Burden Hours: 4,100.
Abstract: The Evaluation of Reading Comprehension Interventions addresses the questions of whether reading comprehension interventions can improve student reading achievement in content subject areas and what interventions are most effective.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2912. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–21513 Filed 10–27–05; 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 November 28, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, 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: October 24, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.
Title: Common Core of Data Survey System.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 114.
Burden Hours: 10,732.
Abstract: The Common Core of Data is the National Center for Education Statistics' universe data collection for finance and nonfinance information about public school districts and schools. Information is collected annually from school districts about the districts and their member schools including enrollment by grade, race/ethnicity, and gender. Information is also collected about students receiving various types of services such as English Language Learner services. The CCD also collects information about the occurrence of high school dropouts. Information about teachers and staffing is also collected.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2829. 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 202–245–6623. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–21514 Filed 10–27–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 1, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 17–19, 2005

Times

November 17

Committee Meetings

Assessment Development Committee: Closed Session—9 a.m. to 2 p.m.;

Assessment Development Committee and Committee on Standards, Design and Methodology (Joint Meeting): Open Session—2 p.m. to 4 p.m.;

Reporting and Dissemination Committee: Open Session—2 p.m. to 4 p.m.;

Executive Committee: Open Session—4:30 p.m. to 5:30 p.m.; Closed Session 5:30 p.m. to 6 p.m.

November 18

Full Board: Open Session—8:30 a.m. to 12 p.m.; Closed Session 12 p.m. to 2 p.m.; Open Session 2:15 p.m. to 4:30 p.m.

Committee Meetings

Assessment Development Committee: Open Session—9:30 a.m. to 12 p.m.;

Committee on Standards, Design and Methodology: Open Session—9:30 a.m. to 12 p.m.;

Reporting and Dissemination Committee: Open Session—9:30 a.m. to 12 p.m.;

November 19

Nominations Committee: Open Session—7:45 a.m. to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: Sheraton National Hotel Arlington, 900 South Orme Street, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on November 17 from 9 a.m. to 2 p.m. (five hours) to review 19 reading blocks and 25–30 reading passages (approximately 190 cognitive items) for the 2009 National Assessment of Educational Progress (NAEP) Reading assessments at grades 4 and 8. This review is required by the No Child Left Behind Act of 2001 prior to submission to the Office of Management and Budget for clearance. This is the last review of the 2009 assessment instrument by NAGB. The meeting must be conducted in closed session as disclosure of proposed test items from the NAEP assessments would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 17, the Assessment Development Committee and the Committee on Standards, Design, and Methodology will meet in a joint open session from 2 p.m. to 4 p.m. and the Reporting and Dissemination Committee will meet in open session from 2 p.m. to 4 p.m.

The Executive Committee will meet in open session on November 17 from 4:30 p.m. to 5:30 p.m. The Executive Committee will meet in closed session on November 17 from 5:30 p.m. to 5:50 p.m. to receive independent government cost estimates from the Associate Commissioner, National Center for Education Statistics for proposed contracts for item development, sample selection, analysis, and reporting of NAEP testing for 2007–2012 and their implications on future NAEP activities. The discussion of independent government cost estimates prior to the development of the Request for Proposals for NAEP 2007–2012 contracts is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

During this closed session, from 5:50 p.m. to 6 p.m. the Executive Committee (only Board members) will discuss a NAGB personnel matter. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On November 18, the full Board will meet in open session from 8:30 a.m. to 12 p.m. From 8:30 a.m. to 9:15 a.m. the Board will approve the agenda, and receive the Executive Director's report

and an update on the work of the National Center for Education Statistics (NCES).

From 9:30 a.m. to 12 p.m. on November 18, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committees—will meet in open session.

The full Board will meet in closed session on November 18 from 12 p.m. to 2 p.m. The Board will receive a briefing from the Associate Commissioner of the National Center for Education Statistics on NAEP participation by various states affected by hurricanes Katrina and Rita, and these questions about participation will have a direct impact on cost estimates for NCES contracts. The meeting must therefore be conducted in closed session as disclosure of independent cost estimates for NCES contracts would significantly impede implementation of the NAEP contract activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 18, the full Board will meet in open session from 2:15 p.m. to 4:30 p.m. At 2:15 p.m., Raymond Simon, U.S. Deputy Secretary of Education, will administer the Oath of Office to a new Board member. From 2:30 p.m. to 4 p.m. Board members will receive an update and take action on the NAEF 2009 Science Framework project. At 4 p.m. an ethics briefing will be provided to Board members by a staff member from the Office of General Counsel. The November 18 session of the Board meeting will conclude at 4:30 p.m.

On November 19, the Nominations Committee will meet from 7:45 p.m. to 8:45 p.m. in open session. The full Board will convene in open session from 9 a.m. to 12 p.m. At 9 a.m., the Board will receive a briefing on the newly formed U.S. Department of Education Higher Education Commission and the relationship of the Commission's work with the Board's work on high school assessment. Board actions on policies and Committee reports are scheduled to take place between 10:15 a.m. and 12 p.m., upon which the November 19, 2005 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: October 24, 2005.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 05–21495 Filed 10–27–05; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050216, ERP No. D–IBR–K65285–CA, San Luis Drainage Feature Re-evaluation Project, Provide Agricultural Drainage Service to the San Luis Unit, Several Counties, CA.

Summary: EPA has concerns about the In-Valley Disposal Alternatives because of uncertainties about treatments to remove selenium from drainage water, the lack of information on contaminant profile and disposal of biotreatment and reverse osmosis brine, and potential environmental effects of evaporation ponds and reuse areas. EPA has environmental objections to the San Francisco Delta and Pacific Ocean Disposal Alternatives because of potential adverse effects to the Delta, Estero Bay, and drinking water supply. Rating EO2.

EIS No. 20050222, ERP No. D–FAA–K51042–AZ, Phoenix Sky Harbor International Airport (PHX), Construction and Operation of a Terminal, Airfield and Surface Transportation, City of Phoenix, Maricopa County, AZ.

Summary: EPA expressed environmental concerns about documentation of alternatives that were eliminated and recommended additional mitigation measures for air quality. Rating EC2.

EIS No. 20050293, ERP No. D–WPA–K08030–AZ, Wellton-Mohawk Generating Facility Project, Construction and Operation a Natural Gas-Fired, Combined-Cycle, Electric Generating Stations, Approval for Right-of-Way, Yuma County, AZ.

Summary: EPA expressed environmental concerns about potential impacts to water quality, wildlife, and traditional cultural properties, and recommended a (1) commitment to specific additional mitigation measures described in the DEIS, (2) selection of pipeline route Option 2, and (3) construction of the double-circuit Ligurta-to-Dome Tap Transmission Line. EPA also requested additional information on air emissions, the regional natural gas pipelines, exhaust stack height variance, and need for local energy generation. Rating EC2.

EIS No. 20050318, ERP No. D–BIA–F65058–MI, Nottawaseppi Huron Band of Potawatomi Indians (the Tribe), Proposes Fee-to-Trust Transfer and Casino Project, Calhoun County, MI.

Summary: EPA expressed environmental concerns about potential impacts to waterbodies and traffic safety, and requested additional information on conservation measures. Rating EC2.

EIS No. 20050350, ERP No. D–COE–K30022–CA, Encinitas/Solana Beach Shoreline Protection Project, To Protect Public Safety and Reduce Storm-Related Damages to Coastal Structures, Cities of Encinitas and Solana Beach, San Diego County, CA.

Summary: EPA expressed environmental concerns about the project's impacts to water resources, endangered species, and air quality, and requested specific information regarding modeling and post-project monitoring for impacts to these resources. Rating EC2.

EIS No. 20050390, ERP No. D–NPS–H65026–IA, Hoover Creek Stream Management Plan, Implementation, Herbert Hoover National Historic Site, IA

Summary: EPA has no objections to the proposed project. Rating LO.

Final EISs

EIS No. 20050263, ERP No. F–AFS–K65280–CA, Power Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Severity and Resistance to Control, Amador Ranger District, Eldorado National Forest, Amado County, CA.

Summary: EPA continues to have concerns about ground disturbing

logging methods in high risk watersheds, and recommends greater use of helicopter or skyline logging systems in order to minimize potential impacts to water resources.

EPA also recommend utilizing the results of water quality monitoring performed by other agencies in evaluating the environmental benefits of the final project design.

EIS No. 20050269, ERP No. F–AFS–K65279–CA, Freds Fire Restoration Project, To Reduce Long-Term Fuel Loading for the Purpose of Reducing Future Fire Severity and Resistance to Control, Eldorado National Forest, El Dorado County, CA

Summary: EPA has no objections to the project as described in the FEIS.

EIS No. 20050272, ERP No. F–NRS–L39060–OR, Williamson River Delta Restoration Project, To Restore and Maintain the Ecological Functions of the Delta, Williamson River, Klamath County, OR.

Summary: No comment letter was sent to the preparing agency.

EIS No. 20050364, ERP No. F–FHW–H40183–00, Council Bluffs Interstate System Improvements Project, Transportation Improvements, Missouri River on I–80 to east of I–480 Interchange, Tier 1, Pottawattamie County, IA and Douglas County, NE.

Summary: EPA has no objections to the proposed project.

EIS No. 20050372, ERP No. F–AFS–K65282–AZ, Pickett Lake and Padre Canyon Allotments Cattle Grazing Management, Authorization and Implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ.

Summary: EPA continues to have environmental concerns about the impacts of grazing on impaired meadow and grassland soils, and the sufficiency of wetlands vegetation protection necessary for successful pronghorn fawning.

EIS No. 20050402, ERP No. F–FHW–J40163–UT, Iron County Transportation Corridors, Construction from Station Road 56 to Exit 51 on Interstate 15, Funding and Right-of-Way Grant, Southwest of the Cedar City Limits, Iron County, UT.

Summary: EPA has no objections to the proposed project.

Dated: October 25, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–21545 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6668–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed October 17, 2005 Through October 21, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050439, Final EIS, COE, MS, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity for Large-Scale Development in Coastal Mississippi, Hancock, Harrison, Jackson, and Mississippi Counties, MS, Wait Period Ends: 12/27/2005, Contact: Dr. Susan I. Rees 251–694–4141.

EIS No. 20050440, Final EIS, SFW, AK, Alaska Peninsula and Becharof National Wildlife Refuges, Revised Comprehensive Conservation Plan, Implementation, AK, Wait Period Ends: 11/28/2005, Contact: Peter Wikoff 907–786–3837.

EIS No. 20050441, Draft EIS, COE, AK, Delong Mountain Terminal Project, Proposed Construction and Operation of Navigation Improvements, Northwest Arctic Borough, AK, Comment Period Ends: 12/27/2005, Contact: Guy McConnell 907–753–2614.

EIS No. 20050442, Draft EIS, NOA, WV, Canaan Valley Institute Office Complex, Proposes to Construct: Offices, Classrooms, Laboratories, 250-Seat Auditorium, Parking Facilities, Outdoor Classrooms and Interpretive Areas, U.S. Army COE Section 404 Permit, Southeast of the Towns of Davis and Thomas, Tucker County, WV, Comment Period Ends: 12/12/2005, Contact: Dr. Bruce B. Hicks 301–713–3318.

EIS No. 20050443, Final EIS, FHW, 00, US–159 Missouri River Crossing Project, Rehabilitation or Replacement of the Missouri River Bridge at Rulo, Funding and U.S. Army COE Section 404 Permit, Richardson County, NE and Holt County, MO, Wait Period Ends: 11/28/2005, Contact: Ed Kosola 402–437–5973.

EIS No. 20050444, Final Supplement, FTA, VA, Norfolk Light Rail Transit System, from the western terminus near Eastern Virginia Medical Center through Downtown Norfolk to an eastern terminus at Newtown Road and Kempsville Road, Funding, U.S. COE Section 404 Permit, USCGD Bridge Permit, City of Norfolk, VA, Wait Period Ends: 11/28/2005 Contact: Patricia Kampf 215–656–7100.

EIS No. 20050445, Draft EIS, NPS, SD, Badlands National Park/North Unit General Management Plan, Implementation, Jackson, Pennington and Shananon Counties, SD, Comment Period Ends: 12/27/2005, Contact: William Supernaugh 605–433–5281.

EIS No. 20050446, Draft EIS, USN, 00, Undersea Warfare Training Range (USWTR), Installation and Operation, Preferred Site (in the Cherry Point Operating Area) and the Alternate Sites (within the Virginia Capes and Jacksonville Operating Areas), NC, VA and FL, Comment Period Ends: 12/12/2005, Contact: Keith Jenkins 757–322–4046.

EIS No. 20050447, Final EIS, FHW, OH, Eastern Corridor Multi-Modal (Tier 1) Project, to Implement a Multi-Modal Transportation Program between the City of Cincinnati and Eastern Suburbs in Hamilton and Clermont Counties, OH, Wait Period Ends: 11/28/2005, Contact: Dennis A. Decker 614–280–6896.

EIS No. 20050448, Draft EIS, BLM, MT, Upper Missouri River Breaks National Monument Resource Management Plan, Implementation, Blaine, Chouteau, Fergus and Phillips Counties, MT, Comment Period Ends: 01/26/2005, Contact: Jerry Majerus 406–538–1924.

EIS No. 20050449, Final EIS, USN, FL, Navy Air-To-Ground Training at Avon Park Air Force Range, To Conduct Air-To-Ground Ordnance Delivery and Training, Fleet Forces Command's Fleet Readiness Training Program (FRTP), Polk and Highland Counties, FL, Wait Period Ends: 11/28/2005, Contact: Will Sloger 843–820–5797.

Amended Notices

EIS No. 20050334, Final EIS, DOE, MT, South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Program, Preserve the Genetic Purity of the Westslope Cutthroat Trout Population, Flathead National Forest, Flathead River, Flathead, Powell and Missoula Counties, MT, Wait Period Ends: 12/12/2005, Contact: Colleen Spiering 503–230–5756. Revision of FR Notice Published on 08/19/2005: Reopened the Wait Period from 09/19/2005 to 12/12/2005.

Dated: October 25, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–21544 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7989–9]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104(k); and CERCLA Section 104(d); ''Discounted Loans' Under Brownfields Revolving Loan Fund Grants''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability.

SUMMARY: Pursuant to an October 17, 2005 Memorandum signed by Thomas P. Dunne, Acting Assistant Administrator of EPA's Office of Solid Waste and Emergency Response, Brownfields Revolving Loan Fund (RLF) grantees may provide discounted loans in certain situations. RLF grants are awarded to eligible entities provided in section 104(k)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to capitalize RLF's for brownfields cleanup. RLF grantees can use their EPA grant funds for loans and subgrants, as well as other eligible activities.

The Office of Solid Waste and Emergency Response provides this policy in response to interest by RLF grantees awarded under CERCLA section 104(k) in issuing discounted loans as part of their RLF programs. Such loans were provided for in earlier policies that applied to Brownfields Cleanup Revolving Loan Fund (BCRLF) grants awarded under CERCLA section 104(d). BCRLF grants were awarded starting FY1997 to FY2002, prior to the passage of the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). Several BCRLF grantees made discounted loans under CERCLA section 104(d) policies, thereby achieving cleanup goals. However, with the signing of the Brownfields Law, new RLF grants, awarded under 104(k) from FY2003 forward, were left with no provision for the use of discounted loans. This policy meets this need, giving RLF grantees additional options to achieve cleanup goals, in keeping with prudent lending practices.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants. Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields.* Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

FOR FURTHER INFORMATION CONTACT: Call Alison Evans at the U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: This policy supersedes all previous memorandums and/or policies that address this practice for these grantees. It applies to:

- RLF grants awarded under CERCLA section 104(k),
- BCRLF grants originally awarded under CERCLA section 104(d) that have transitioned to section 104(k) as provided in section 104(k)(3)(D), and,
- BCRLF grants awarded under CERCLA section 104(d) that have not transitioned.

RLF grantees may offer discounted loans (also called ''principal forgiveness'') under the following conditions:

I. Borrowers for Discounted Loans

RLF grantees may offer discounted loans to those entities provided in CERCLA section 104(k)(1) including states, political subdivisions, and others, as well as nonprofit organizations.[1] Private, for-profit entities are not eligible for discounted loans.

II. Conditions for Individual Discounted Loans

For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven shall not exceed $200,000. For example, a loan of $600,000 may be discounted at 30 percent, resulting in $180,000 in principal forgiven. However, a loan of $800,000, could only be discounted at 25 percent, resulting in $200,000 in principal forgiven (any discount above 25 percent, in this case, would result in more than $200,000 in principal forgiven, which is not provided for under this policy). In addition to these terms, a discounted loan may not be used in combination with a subgrant at a single site.

III. Conditions for RLF Grant Management When Discounted Loans Are Employed

For an RLF grant budget as a whole, the total dollar amount of principal forgiven through discounted loans plus the amount subgranted shall not exceed a total of 40% of RLF grant funds awarded.

Background

On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize Federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. Eligibility for brownfields cleanup grants is limited to ''eligible entities'' and nonprofits.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental

[1] For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107, 31 U.S.C. 6101, Note. The term ''nonprofit organization'' means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

Dated: October 24, 2005.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 05–21530 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0247; FRL–7735–2]

Pennsylvania and Virginia State Plans for Certification of Applicators of Restricted Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The States of Pennsylvania and Virginia have submitted to EPA amendments to their respective State Plans for Certification and Training of Applicators of Restricted Use Pesticides. The proposed amendments add new commercial categories for vertebrate pest control. Notice is hereby given of the intention of the Regional Administrator, Region III, to approve the revised Pennsylvania and Virginia Plans for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments must be received on or before November 28, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0247, 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: Fabiola Estrada, USEPA Region III, Pesticide/Asbestos Programs and Enforcement Branch (3WC32), 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–2171; e-mail address: *Estrada.Fabiola@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0247. 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. 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.

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.

In addition to the sources listed in this unit, you may obtain copies of the amended Pennsylvania and Virginia Certification Plans, other related documents, or additional information by contacting:

1. Fabiola Estrada at the address listed under **FOR FURTHER INFORMATION CONTACT.**

2. David Scott, Bureau of Plant Industry, Pennsylvania Dept. of Agriculture, 2301 North Cameron St., Harrisburg, PA 17110–9408; telephone number: 717–772–5214; e-mail: *dascott@state.pa.us*.

3. Kathy Dictor, Virginia Department of Agriculture & Consumer Services, Office of Pesticide Services, 2221 Carbon Hill Drive, Midlothian, VA 23113; telephone number: 804–786–0685; e-mail: *kdictor@vdacs.state.va.us*.

4. Michelle Devaux, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., 20460–0001; telephone number: (703) 305–7666; e-mail address: *devaux.michelle@epa.gov*.

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–2005–0247. 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–2005–0247. 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–2005–0247.

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 NumberOPP–2005–0247. 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 identified 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 yourcomments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you usedthat support your views.

4. If you estimate potential burden or costs, explain how youarrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in thisnotice.

7. To ensure proper receipt by EPA, be sure to identify the docketcontrol number assigned to this action in the subject line on the firstpage of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

FIFRA section 3 requires that pesticide applicators become certified to purchase, use, or supervise the use of restricted use pesticides. FIFRA section 11 allows EPA to designate the pesticide applicator certification program to states with EPA-approved plans. Federal regulations at 40 CFR 171.7 describe what constitutes an EPA-approved plan, and 40 CFR 171.8 requires that any substantial modification to a plan must receive prior approval from the Administrator. EPA is seeking public comment on amendments that are substantial modifications to the Pennsylvania and Virginia plans.

These amendments will establish new commercial applicator categories. In the Pennsylvania plan, a ''Public Health--Vertebrate Pest Control'' category will be added to certify employees of U.S. Department of Agriculture, Wildlife Services (WS) for the use of 1080 Livestock Protection Collar (LPC). In the Virginia plan, a ''Vertebrate Pest Control'' category will be added to certify employees of WS for the use of LPC and the M-44 Device (M-44). WS is authorized by Congress to manage wildlife damage. Pennsylvania and Virginia certification of WS employees as pesticide applicators will allow them to purchase, use, and supervise the use of 1080 LPC and M-44 to carry out their responsibilities.

In October 1983, EPA Assistant Administrator for Solid Waste and Emergency Response, Lee M. Thomas, decided to permit the registration of 1080 LPC based on an Administrative Law Judge ruling. The decision requires applicators of 1080 LPC to receive specific training and to comply with recordkeeping and reporting requirements beyond that of applicators of restricted use pesticides. Therefore, a distinct certification process is required in any state wanting to certify applicators of 1080 LPC. The M-44 is used by certified applicators to control predators of livestock and poultry. Similar to LPC 1080, M-44 has specific use restrictions that go beyond those required for most other categories of applicators of restricted use pesticides. The amendments to the Pennsylvania and Virginia plans satisfy the specific training, recordkeeping, and reporting requirements for both LPC 1080 and M-44.

EPA has reviewed the new categories and announces its intentions to approve the amendments to the Pennsylvania and Virginia State Plans.

III. What Action is the Agency Taking?

EPA has reviewed the revised Pennsylvania and Virginia Certification Plans and finds them in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to approve the amended plans and seeks public comment.

List of Subjects

Environmental protection, Education, Pesticides and pests.

Dated: October 14, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–21535 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0279; FRL–7741–4]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product, Cuelure containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP –2005–0279. 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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. 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. Did EPA Approve the Application?

The Agency approved the application after considering all required data on

risks associated with the proposed use of 4-(p-acetoxyphenyl)-2-butanone (Cuelure), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 4-(p-acetoxyphenyl)-2-butanone (Cuelure) in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of September 24, 2004 (69 FR 57284) (FRL–7674–5), which announced that Farma Tech International Corporation, P.O. Box 27227, Fresno, CA 93729–7227, had submitted an application to register the pesticide product, Cuelure (File Symbol 81325–R), a semiochemical attractant for manufacturing end-use products for the control of certain Tephriditae flies of the order Diptera, containing the active ingredient 4-(p-acetoxyphenyl)-2-Butanone at 98.00%, an active ingredient not included in any previously registered product.

The application was approved on September 29, 2005 as Cuelure for manufacturing end-use products to control certain Tephriditae flies of the order Diptera (EPA Registration Number 81325–1).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 19, 20005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–21462 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0285; FRL–7743–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 26, 2006, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than April 26, 2006.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0285. 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. 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 the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 91 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000100–01002	Gramoxone Super Herbicide	Paraquat dichloride
000100–01009	Cyclone Herbicide	Paraquat dichloride
000100–01010	Surefire Herbicide	Diuron
		Paraquat dichloride
000100–01043	Gramoxone Extra Herbicide	Paraquat dichloride

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000100–01074	Cyclone Concentrate Herbicide	Paraquat dichloride
000192–00217	Marman Temephos 1% Granule	Temephos
000192–00218	Marman Temephos 4 EC	Temephos
000228–00209	Riverdale Team 1.50 Lawn Weed and Feed	Trifluralin
		Benfluralin
000228–00254	Riverdale Team Tm .88 Lawn Weed and Feed	Trifluralin
		Benfluralin
000228–00255	Riverdale Team 1.11% Lawn Weed and Feed	Trifluralin
		Benfluralin
000228–00257	Riverdale Team .67% Lawn Weed and Feed	Trifluralin
		Benfluralin
000241–00325	Passport Herbicide	Trifluralin
		Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-5-e
000264–00628	Betanex 70 WP	Desmedipham
000264–00629	Betamix 70WP	Phenmedipham
		Desmedipham
000264–00945	Gustafson Flo-Pro IMZ Flowable	Imazalil
000264 CA–80–0146	Guthion 50% Wettable Powder In Water Soluble Packets	Azinphos-Methyl
000264 CO–02–0009	Gustafson Flo-Pro Imz Flowable	Imazalil
000264 ID–98–0014	Gustafson Flo-Pro IMZ Flowable	Imazalil
000270–00344	Adams Flea and Tick Dust II	Carbaryl
		Piperonyl butoxide
		Pyrethrins
		Silica gel
000270–00361	Mycodex Pet Shampoo with Carbaryl	Carbaryl
000303–00079	Tor Germicidal Cleaner	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18,5%C12)
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C12, 30%C14, 17%C16,3%C18)
000303–00209	Ascend	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12,10%C16)
		1-Decanaminium, N-decyl-N,N-dimethyl-, chloride
000303–00210	Q-Cide	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12,10%C16)
		1-Decanaminium, N-decyl-N,N-dimethyl-, chloride
000303–00226	Tor II	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12,10%C16)

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		1-Decanaminium, N-decyl-N,N-dimethyl-, chloride
000432–00773	Bioresmethrin ULV	Bioresmethrin
000464–00713	Ucarcide P200 Antimicrobial	1,2-Benzenedicarboxaldehyde
000769–00579	R & M Flea & Tick Spray #1	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000769–00580	R & M Flea & Tick Shampoo #1	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000769–00581	R & M Flea & Tick Spray #2	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000769–00582	R & M Flea & Tick Shampoo #2	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000769–00606	Sureco Insect Repellent Spray	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Diethyl toluamide
000769–00615	R & M Flea and Tick Shampoo #7	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
000769–00905	Gibberellic Acid Wonder-Brel	Gibberellic acid, monopotassium salt
000829–00131	SA-50 Brand Sevin 1.75% Dust	Carbaryl
000829–00182	SA-50 Brand Bait Pellets Kill Land Snails & Slugs	Metaldehyde
		Carbaryl
002212–00002	Elimstaph No. 2 Germicidal Cleaner	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12,10%C16)
002724–00501	Elite Flea & Tick Shampoo #8	2,5-Pyridinedicarboxylic acid, dipropyl ester

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
002935–00537	Clean Crop Captan 5% Potato Seed Treater	Captan
002935–00538	Potato Seed Treater with Bark	Captan
005481–00256	Royal Brand Ferbam Dust	Ferbam
005481–00268	76W Ferbam Fungicide	Ferbam
007401–00072	Ferti-Lome Improved Bug Bait	Metaldehyde
		Carbaryl
007401–00081	Ferti-Lome Carbaryl-Sulfur 10-40 Dust	Carbaryl
		Sulfur
007401–00083	Ferti-Lome Carbaryl Garden Spray	Carbaryl
007401–00148	Sevin & Molasses Insect Bait	Carbaryl
007401–00154	10% Sevin Dust	Carbaryl
007401–00210	Hi-Yield Sevin Emulisfiable Concentrate	Carbaryl
007401–00291	Hi-Yield Mater-Tater and Other Vegetable Dust	Carbaryl
007401–00310	Hi-Yield Sevin Plus Dipel Dust	Bacillus thuringiensis (Berliner)
		Carbaryl
007401–00334	Hi-Yield Sos Garden Dust	Carbaryl
		Sulfur
007401–00386	Ferti-Lome Gypsy Moth, Japanese Beetle and Pine Moth	Carbaryl
008660–00068	Ferbam Fungicide	Ferbam
008660–00139	Vertagreen Fertilizer for Professional Use with Balan	Benfluralin
		Oryzalin
008660–00146	Vertagreen Pre-Emergence Weed & Feed	Benfluralin
		Oryzalin
009444–00028	Fly Foam Insect Repellent for Horses	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
009444–00098	Purge Wasp & Hornet Jet Freeze	Carbaryl
		Piperonyl butoxide
		Pyrethrins
009444–00190	Wasp & Hornet Jet Freeze I	Carbaryl
		Piperonyl butoxide

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Pyrethrins
010159–00002	VPG 5% Sevin Dust	Carbaryl
010163–00032	Prokil Carbaryl Bait	Carbaryl
010163–00060	Gowan Carbaryl 4	Carbaryl
010163–00124	Gowan Carbaryl 10 Dust	Carbaryl
010163–00133	Gowan Carbaryl 80 WP	Carbaryl
010163–00134	Gowan Carbaryl 80 WSB	Carbaryl
010163 UT–01–0005	Prokil Carbaryl Bait	Carbaryl
012455 PA–82–0016	Ditrac Rat and Mouse Bait	Diphacinone
019713–00068	Drexel Ziram 76	Ziram
019713–00279	IDA, Inc. Ziram 76 A Wettable Fungicide	Ziram
034911–00006	Hi-Yield 5% Sevin Dust	Carbaryl
034911–00008	Hi-Yield Bug Bait	Metaldehyde
		Carbaryl
040849–00057	Enforcer Flea & Tick Spray X	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
040849–00058	Enforcer Flea & Tick Shampoo X	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
040849–00073	Fleapro Ear Mite Treatment	2,5-Pyridinedicarboxylic acid, dipropyl ester
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
042964–00002	A-3	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18,5%C12)
042964–00029	Asepticare Spray Cleaner/Disinfectant	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18,5%C12)
		Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12,10%C16)
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)
045735–00024	Carbaryl 99% Technical Grade Insecticide	Carbaryl
045735–00025	Carbaryl 4L Flowable	Carbaryl
047000–00134	Clean Crop Equinol Horse Spray	2,5-Pyridinedicarboxylic acid, dipropyl ester

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		4,7-Methano-1H-isoindole-1,3(2H)-dione,2-(2-ethylhexyl)-3a,4,7,7a-tetrahydro-
		Piperonyl butoxide
		Pyrethrins
047000–00142	Horse Fly Spray R	2,5-Pyridinedicarboxylic acid, dipropyl ester
		Piperonyl butoxide
		Pyrethrins
048273–00003	Ametryne 80W	Ametryn
051036 PA–03–0001	Diazinon AG 500	Diazinon
051036 TX–01–0014	Diazinon AG 500	Diazinon
051036 WA–03–0011	Diazinon AG 500	Diazinon
053883–00041	Martin's 10% Sevin Dust	Carbaryl
053883–00042	Martin's 5% Sevin Dust	Carbaryl
053883–00043	M Martin's Lice Killer contains Sevin	Carbaryl
056938–00003	Fresh & Clean	EDTA, tetrasodium salt
		1-Decanaminium, N-decyl-N,N-dimethyl-, chloride
		Sodium metasilicate
		Sodium carbonate
067760 WA–00–0004	Cheminova Methyl Parathion 4 EC	Methyl parathion

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period.

In addition to the registrations listed in Table 1, the Agency received requests to cancel four additional registrations. Under terms of a memorandum of agreement the effective date of cancellation for these four registrations will be December 31, 2005, and the existing stocks date will be December 31, 2006. The four registrations in question are: 001812–00451 Finitron Brand Sulfluramid AB MUP ; 001812–00348 Volcano Ant Bait; 000279–03154 Fluoguard Ant Control Baits; and 000499–00459 Micro-Gen Ant Reactor.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, Po Box 18300, Greensboro, NC 27419–8300
000192	Value Gardens Supply, LLC, d/b/a Value Gardens Supply, PO Box 585, Saint Joseph, MO 64502
000228	Nufarm Americas Inc., 1333 Burr Ridge Parkway, Suite 125a, Burr Ridge, IL 60527–0866
000241	BASF Corp., PO Box 13528, Research Triangle Park, NC 27709–3528

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
000270	Farnam Companies Inc., PO Box 34820, Phoenix, AZ 85067
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103
000303	Huntington Professional Products, A Service of Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, PO Box 12014, Research Triangle Park, NC 27709
000464	Dow Chemical Co., The, Attn: Rhonda Vance-Moeser, 1803 Building, Midland, MI 48674
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct. Industrial Blvd., St Louis, MO 63122–6682
000769	Value Gardens Supply, LLC, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502
000829	Southern Agricultural Insecticides, Inc., PO Box 218, Palmetto, FL 34220
001812	Dupont Crop Protection/stine-Haskell Research Center, Agent For: Griffin L.L.C., PO Box 30, Newark, DE 19714–0030
002212	Walter G. Legge Co., Inc., PO Box 591, Peekski, NY 10566
002724	Wellmark International, 1501 E. Woodfield Rd., Suite 200 W, Schaumburg, IL 60173
002935	Wilbur Ellis Co., PO Box 1286, Fresno, CA 93715
005481	Amvac Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660–1706
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007–1451
008660	Sylorr Plant Corp., PO Box 142642, St. Lou, MO 63114–0642
009444	Waterbury Companies Inc., PO Box 640, Independence, LA 70443
010159	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007–1451
010163	Gowan Co, PO Box 5569, Yu, AZ 85366–5569

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
012455	Bell Laboratories Inc., 3699 Kinsman Blvd., Madison, WI 53704
019713	Drexel Chemical Co, PO Box 13327, Memphis, TN 38113–0327
034911	Brazos Associates, Inc., Agent For: Hi-Yield Chemical Co., 1806 Auburn Drive, Carrollton, TX 75007–1451
040849	Acuity Specialty Products Group, Inc., Agent For: Enforcer Products, 1420 Seaboard Industrial Blvd. NW, Atlanta, GA 30318
042964	Airkem Professional Products, Division of Ecolab, Inc., Ecolab Center, St. Paul, MN 55102
045735	Burlington Scientific Corp., 71 Carolyn Blvd., Farmingdale, NY 11735
047000	Steven E. Rogosheske, Agent For: Chem-Tech Ltd., 1479 W. Pond Rd, Eagan, MN 55122
048273	Nufarm Co., Agent For: Marman USA Inc., 1333 Burr Ridge Parkway #125A, Burr Ridge, IL 60527
051036	Micro-Flo Co. LLC, 530 Oak Ct. Drive, Memphis, TN 38117
053883	Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507–1041
056938	ABC Corp., 94-085 Leonui Street, Waipahu, HI 96797
067760	Cheminova Inc., 1700 Route 23 - Ste 300, Wayne, NJ 07470

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before April 26, 2006. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 20, 2005.

Robert A. Forrest,

Acting Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 05–21532 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 14, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Clarence Ray Brewer, Jr., Central City, Kentucky; to acquire voting shares of Community Bancorp of McLean County, Kentucky, Inc., Island, Kentucky, and thereby indirectly acquire voting shares of First Security Bank and Trust, Island, Kentucky.

Board of Governors of the Federal Reserve System, October 25, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5979 Filed 10–27–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 1:45 p.m., Wednesday, November 2, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may **register on–line**. You may pre–register until close of business November 1, 2005. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on (202) 452-3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on (202) 263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts, and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Summary Agenda:

1. Proposed 2006 Private Sector Adjustment Factor.

Discussion Agenda:

1. Proposed 2006 fee schedules for priced services and electronic access.

NOTE: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 for a **recorded announcement** of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an **electronic announcement**. (The Web site also includes procedural and other information about the open meeting.)

Board of Governors of the Federal Reserve System, October 26, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–21648 Filed 10–26–05; 3:23 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0208]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Office of the Secretary, HHS.

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 a proposed collection 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: Regular Clearance, Extension of a currently approved collection;

Title of Information Collection: Applicant Background Survey;

Form/OMB No.: OS–0990–0208;

Use: This form will be used to ask applicants for employment, how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities, in compliance with EEOC management directives;

Frequency: Reporting;

Affected Public: Individuals or households;

Annual Number of Respondents: 30,000.00;

Total Annual Responses: 30,000.00;

Average Burden Per Response: 1/2 hour;

Total Annual Hours: 1,000;

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 received within 60-days, and directed to the OS Paperwork Clearance Officer 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 (0990–0208), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: October 19, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–21515 Filed 10–27–05; 8:45 am]

BILLING CODE 4153–17–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 Approval;

Title of Information Collection: Medical Reserve Corps (MRC) Unit Profile and Reports;

Form/OMB No.: OS–0990–New;

Use: Medical Reserve Corps units are currently located in 330 communities across the United States and represent a resource of over 50,000 medical and public health volunteers. In order to better support the MRC units in communities across the United States, and to plan for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activites is needed. MRC unit leaders will be asked to voluntarily update this information at least quarterly.

Frequency: Reporting, quarterly and on occasion;

Affected Public: State, local, or tribal governments, or other for profit, not for profit institutions;

Annual Number of Respondents: 400;

Total Annual Responses: 3,200;

Average Burden Per Response: 1 hour;

Total Annual Hours: 2,800.

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: October 19, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–21516 Filed 10–27–05; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of the notice.

Proposed Project

Early Hearing Detection and Intervention Hearing Screening and Follow-up Survey—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center on Birth Defects and Developmental Disabilities (NCBDDD) of the Centers for Disease Control and Prevention promotes the health of babies, children, and adults with disabilities. Activities related to addressing hearing loss (HL) among newborns and infants are part of NCBDDD's mission. HL is a common birth defect that affects approximately 12,000 infants each year, and can result in developmental delays when left undetected. As awareness about infant

HL increases, so does the demand for accurate information about incidence, rate of screening, referral to care, and loss to follow-up. Given the lack of a standardized and readily accessible source of data, CDC's Early Hearing Detection and Intervention (EHDI) program has developed a survey to be used annually for State and Territory EHDI Program Coordinators that utilizes uniform definitions to collect aggregate, standardized EHDI data from states and territories. This information is important for helping to ensure infants and children are receiving recommended screening and follow-up services, documenting the occurrence and etiology of differing degrees of HL among infants, and determining the overall impact of infant HL on future outcomes, such as cognitive development and family dynamics. These data will also assist state EHDI programs with quality improvement activities and provide information that will be helpful in assessing the impact of Federal initiatives. The public will be able to access this information via CDC's EHDI Web site (*http://www.cdc.gov/ncbddd/ehdi/*). There are no costs to respondents other than their time.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
State and territory EHDI program coordinators	53	1	4	212
Total				212

Dated: October 21, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–21539 Filed 10–27–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05CY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Illness and Injury Among Backcountry Users in Yellowstone National Park—New—Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases (NCID).

There are limited data on the risk factors for illness and injury among persons who travel into backcountry areas of the United States. The backcountry encompasses primitive or wilderness areas that lack most facilities and services and that are reached primarily by hiking, boating, or horseback. In general, backcountry users must bring in their own supplies (such as shelter, food, water, or water treatment supplies). As many as 68% to 82% of long-distance hikers and backpackers have reported experiencing illnesses or injuries during their time in the backcountry. For example, 4% to 56% have reported gastrointestinal illnesses and 41% to 62% have reported musculoskeletal injuries.

Such a high burden of illness and injury has significant medical and economic implications given the increasing popularity of backcountry use. In 1994–95, almost 8% of Americans age 16 years and older (about 15 million persons) went backpacking in the previous 12 months, which involved camping for one or more nights along a trail and carrying food, shelter, and utensils with them. In the same period of time, about 14% (or 28 million persons) camped in primitive settings that usually lacked restrooms, hookups, and most facilities and services. In fact, camping in backcountry areas increased by about 72% from 1982–83 to 1994–95. While people can travel in the backcountry in many locations and on both private and public lands, many travelers hike, backpack, and camp in the backcountry in national parks. In 2003, there were over 266 million recreational visits to national parks with over 1.8 million overnight stays in the backcountry. Yellowstone National Park alone had almost 19,690 persons visit the backcountry in 2003, accounting for over 46,000 overnight stays.

Because little is known about health outcomes for visitors who use the backcountry areas of our nation's parks, advice to park managers and the public is currently general in nature, based only on standard disease prevention principles. Furthermore, some outdoor use groups have recently questioned some of this standard advice, such as the universal need for careful filtration and disinfection of backcountry drinking water. This study will investigate behavioral and environmental risk factors that may be associated with illness and injury among persons who require park permits to travel into backcountry areas in Yellowstone National Park during the backcountry season from May 1–Oct. 31, 2006. The data collected will be used to provide an estimate of the burden of illness and injury among backcountry users and will also provide information about a variety of risk factors for illness and injury in the backcountry, including the risks associated with drinking untreated water from lakes and streams. With this information, the National Park Service (NPS) will be able to address

many of the questions raised by outdoor users and public health officials, and improve and strengthen evidence-based NPS guidelines for backcountry health and sanitation practices. To gather this information, consent to contact after the conclusion of the backcountry trip will be obtained from an estimated 7,000 backcountry users 18 years of age or older when they present to the Yellowstone National Park's permit offices prior to entering the backcountry. A questionnaire (in either Internet-based or paper-based format) will then be offered to an estimated 5,600 backcountry users who consent to be contacted. Participants will be asked about their health (before, during and after backcountry travel), water consumption, water preparation habits, food consumption, food preparation habits, sanitation practices, recreational water use, animal exposure, and demographics.

This study is the beginning of what will be an ongoing effort to improve the scientific basis of NPS recommendations and policies related to protecting human health in the backcountry. This effort seeks to begin to identify disease transmission pathways and assess disease and injury risks associated with specific activities, choices, and behaviors of backcountry visitors, such as water purification, sanitation practices, and hygiene. Thoroughly understanding transmission pathways and the interactions of agent, environment, and host will enable the NPS to effectively and efficiently improve visitor protection efforts.

There will be no cost to or remuneration of respondents other than their time. Their participation is voluntary and there will be no penalty for non-participation.

Estimate of Annualized Burden Table

Respondents	Form name	Number of respondents	Number responses per respondent	Hrs/response (in hours)	Total response burden hours
Backcountry Users of Yellowstone Park ...	Consent to Further Contact	7000	1	2/60	233
	Web-Based Questionnaire	5600	1	15/60	1400
	Total				1633

Dated: October 21, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–21540 Filed 10–27–05; 8:45 am]

BILLING CODE 4163–18–P 1

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–0021, CMS–838, CMS–10134, CMS–R–137, CMS–R–257, CMS–29/CMS–30, CMS–10150, CMS–381, CMS–10161, CMS–10162, and 10136]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR 447.31; *Use:* Overpayments may occur in either the Medicare and Medicaid program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. Certain Medicaid providers which are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. These information collection requirements give CMS the authority to recover Medicaid overpayments by offsetting payments due to a provider under the program. *Form Number:* CMS–R–0021 (OMB #0938–0287); *Frequency:* Reporting—On occasion; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Credit Balance Reporting Requirements and Supporting Regulations in 42 CFR 405.371, 405.378, and 413.20; *Form Number:* CMS–838 (OMB #0938–0600); *Use:* Section 1815(a) of the Social Security Act authorizes the Secretary to request information from providers which is necessary to properly administer the Medicare program. Quarterly credit balance reporting is needed to monitor and control the identification and timely collection of improper payments. The reporting requirements provide CMS with the authority to impose sanctions such as the suspension of program payments in accordance with 42 CFR 413.20(e) and 405.371 if providers do not report credit balances on a timely basis. Furthermore, once a credit balance has been identified on a CMS–838 form and demand for payment is made, CMS has the authority to charge interest if the amount is not repaid within 30 days in accordance with 42 CFR 405.378. The collection of credit balance information is needed to ensure that millions of dollars in improper program payments are collected. Approximately 48,300 health care providers will be required to submit a quarterly credit balance report that identifies the amount of improper payments they received that are due to Medicare. The intermediaries will monitor the reports to ensure these funds are collected; *Frequency:* Quarterly; *Affected Public:* Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 48,300; *Total Annual Responses:* 193,200; *Total Annual Hours:* 579,600.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Group Practice (PGP) Standardized Ambulatory Care Quality Measure Collection Initiative; *Use:* The Benefits Improvement & Protection Act of 2000 mandated the PGP Demonstration and gave the Secretary discretion to use quality measures to assess physician performance in order to reward physicians for improvements in the quality and efficiency of health care. This demonstration is intended to strengthen the Medicare program by offering innovative models to people on Medicare that improve quality and access and lower costs. As a result, Medicare beneficiaries will directly benefit from these innovative models. The demonstration represents the first pay for performance project for physician group practices and will enable comparisons across groups and geography; *Form Number:* CMS–10134 (OMB #0938–0942); *Frequency:* Annually; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 790.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Internal Revenue Service/Social Security Administration/Centers for Medicare and Medicaid Services Data Match and Supporting Regulations in 42 CFR 411.20–491.206; *Form Number:* CMS–R–137 (OMB #0938–0565); *Use:* The Data Match project and information collection activity provides a ''check and balance'' against the Medicare program relying solely on a single information collection system. It gives CMS the opportunity to pursue collection of identified mistaken payments (within legal constraints) and to update incorrect status indicators to prevent further incorrect suspensions or mistaken payment or denial. Employers identified through a match of IRS, SSA, and Medicare records will be contacted concerning group health plan coverage of identified individuals to ensure compliance with Medicare Secondary Payer provisions, in accordance with the Medicare statute found at 42 U.S.C. 1395y(b); *Frequency:* Reporting—Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government; *Number of Respondents:* 341,065; *Total Annual Responses:* 341,065; *Total Annual Hours:* 1,986,810.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Advantage Disenrollment Form to original Medicare; *Form Number:* CMS–R–257 (OMB #0938–0741); *Use:* Section 4001 of the Balanced Budget Act of 1997 amended the Social Security Act to add Section 1851, including 1851(c)(1) which required the establishment of a procedure and form to make and change Medicare Advantage elections, which include disenrollment. The disenrollment form provides beneficiaries an option to submit a disenrollment to a neutral third party, process the disenrollment action as a change of election and to elicit the reasons for disenrollment in order to discern and report disenrollment rates; *Frequency:* On occasion and Other (one-time only); *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 3,300.

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Report Form and Supporting Regulations in 42 CFR 491.1–491.11; *Form Number:* CMS–29 and CMS–30 (OMB #0938–0074); *Use:* The form CMS–29 is utilized as an application to be completed by suppliers of Rural Health Clinic (RHC) services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by CMS Regional Offices (RO). The Form CMS–30 is an instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the CMS ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself; *Frequency:* Reporting—Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 698; *Total Annual Responses:* 698; *Total Annual Hours:* 1,222.

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Drug Pricing and Network Pharmacy Data from Medicare Prescription Drug Plans (PDPs and MA–PDs) and Supporting Regulations in 42 CFR 423.48; *Form Number:* CMS–10150 (OMB #0938–0951); *Use:* Both stand alone prescription drug plans (PDPs) and Medicare Advantage Prescription Drug (MA–PDs) plans will be required to submit drug pricing and pharmacy network data to CMS. These data will be made publicly available to Medicare beneficiaries through the new Medicare prescription drug plan finder tool that will be launched in the fall of 2005 on *http://www.medicare.gov*. The purpose of the data is to enable beneficiaries to compare, learn, select and enroll in a plan that best meets their needs; *Frequency:* Reporting—Weekly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 350; *Total Annual Responses:* 18,200; *Total Annual Hours:* 36,400.

8. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Identification of Extension Units of Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers and Supporting Regulations in 42 CFR Sections 485.701–485.729; *Form Number:* CMS–381 (OMB #0938–0273); *Use:* Medicare provides OPT/OSP providers to be surveyed to determine compliance with Federal regulations. All locations where OPT/OSP providers furnish services must meet these requirements. The CMS–381 is the form used to identify all the OPT/OSP locations. *Frequency:* Reporting—Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2960; *Total Annual Responses:* 2960; *Total Annual Hours:* 740.

9. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* New Freedom Initiative—Web-based Reporting System for Grantees; *Form Number:* CMS–10161 (OMB #0938–NEW); *Use:* CMS currently awards competitive grants to States and other eligible entities for the purpose of designing and implementing effective and enduring improvements in community-based long-term services and supporting systems. We currently require grantees to report quarterly, semi-annual, and or annually, depending on the grant type. CMS requires the information obtained

through web-based grantee reporting for two reasons: (1) In order to effectively monitor the grants, and; (2) to report to Congress and other interested stakeholders the progress and obstacles experienced by the grantees. The grantees are the respondents to the web-based reporting system; *Frequency:* Reporting—Quarterly, Semi-annually, and Annually; *Affected Public:* State, Local or Tribal Government and Not-for-profit institutions; *Number of Respondents:* 298; *Total Annual Responses:* 836; *Total Annual Hours:* 6,440.

10. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Care Improvement Survey; *Use:* The purpose of this beneficiary survey is to obtain information about beneficiary behavioral change, physical functioning and satisfaction with the Chronic Care Improvement (CCI) programs. Legislation requires that all of the aforementioned data elements be collected, as they provide information that is critical to the decision-making process as it pertains to the expansion of the pilot programs. The chronic care improvement programs are to be designed to incorporate relevant features from private sector programs but also be sufficiently flexible to adapt to the unique needs of their Medicare populations. This survey is required to support the legislative mandate to evaluate the Chronic Care Improvement Programs. Beneficiary participation in the CCI–I program will be voluntary and will not change the scope, duration or amount of Medicare fee-for-service (FFS) benefits currently received by FFS Medicare beneficiaries; *Form Number:* CMS–10162 (OMB #0938–NEW); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 9,449; *Total Annual Responses:* 9,449; *Total Annual Hours:* 2,636.

11. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Care Management Performance (MCMP) Demonstration—Standardized Ambulatory Care Quality Collection Initiative; *Use:* The MCMP Demonstration was authorized by Section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). This project requires the Secretary to establish a pay-for-performance 3-year pilot with physicians to promote the adoption and use of health information technology to improve the quality of patient care for chronically ill Medicare patients. This demonstration represents the first pay for performance project fostering the adoption of health information technology in small physician group practices and will enable a test of the concept to improve the quality and efficiency of care in Fee-for-Service Medicare; *Form Number:* CMS–10136 (OMB #0938–0941); *Frequency:* Annually; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 19,200.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office and (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on November 28, 2005. OMB Human Resources and Housing Branch, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 21, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–21517 Filed 10–27–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1316–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council, December 5, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: The Council meeting is scheduled for Monday, December 5, 2005, from 8:30 a.m. until 3:30 p.m. e.s.t.

ADDRESSES: The meeting will be held in Room 705A 7th floor, in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

MEETING REGISTRATION: Persons wishing to attend this meeting must register by contacting Kelly Buchanan, the Designated Federal Official (DFO) by e-mail at *PPAC@cms.hhs.gov* or by telephone at (410) 786–6132, at least 72 hours in advance of the meeting. This meeting will be held in a Federal Government Building, Hubert H. Humphrey Building, and persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, and will be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the Hubert H. Humphrey Building and will not be permitted to attend the Council meeting.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, (410)786–6132, or e-mail *PPAC@cms.hhs.gov.* News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free), (410)786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining four members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping four-year terms; terms of more than two years are contingent upon the renewal of the Council by appropriate action prior to its termination.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(a)(3) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Ronald Castellanos, M.D., Chairperson; Jose Azocar, M.D.; M. Leroy Sprang, M.D.; Rebecca Gaughan, M.D.; Peter Grimm, D.O.; Carlos R. Hamilton, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Christopher Leggett, M.D.; Barbara McAneny, M.D.; Geraldine O'Shea, D.O.; Laura B. Powers, M.D.; Gregory J. Przybylski, M.D.; Anthony Senagore, M.D.; and Robert L. Urata, M.D.

The meeting will commence with the Council's Executive Director providing a status report and the CMS responses to the recommendations made by the Council at the August 22, 2005 meeting as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Physician Fee Schedule and Outpatient Fee Schedule Final Rule
- Pay for Performance-Quality Measures
- Medicare Provider Satisfaction Survey

For additional information and clarification on these topics, contact the DFO as provided in the ''For Further Information Contact'' section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a five-minute oral presentation on agenda issues must contact the DFO by 12 noon, e.s.t., November 18, 2005, to be scheduled. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to Kelly Buchanan, DFO, no later than 12 noon, e.s.t., November 18, 2005, for distribution to Council members for review prior to the meeting. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution no later than noon, e.s.t., November 18, 2005. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodations

Individuals requiring sign language interpretation or other special accommodation must contact the DFO by e-mail at *PPAC@cms.hhs.gov* or by telephone at (410) 786–6132 at least 10 days before the meeting.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).)

Dated: September 30, 2005.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–20316 Filed 10–27–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

AGENCY: Administration for Native Americans, ACF, HHS.

ACTION: Notice of public comment on the Tribal Consultation Session to be held on December 6, 2005.

SUMMARY: The Administration for Children and Families (ACF) will be holding a one-day Tribal Consultation Session on December 6, 2005, at the Wyndham Hotel (California Grand Ball Room) in Palm Springs, California.

DATES: December 6, 2005.

FOR FURTHER INFORMATION CONTACT: LeeAnna Arrowchis, Administration for Native Americans (ANA) toll-free at 1–877–922–9262, or register online at *http://www.acf.hhs.gov/programs/ana*.

SUPPLEMENTARY INFORMATION: ACF would like to invite Tribal leaders to participate in a formal Consultation Session with ACF senior officials and program directors. The Consultation Session will take place Tuesday, December 6, 2005, from 9 a.m. to 4 p.m. in the Wyndham Hotel. This event precedes the ACF National Native American Conference to be held December 7–9, 2005, at the Palm Springs Convention Center.

The intent of this Consultation Session is for ACF officials to hear firsthand from Tribal leaders and representatives from Tribal organizations and Native non-profits about the implementation of ACF programs in Native communities. Of particular interest are the challenges that Tribes and Tribal organizations face in accessing ACF program funding and using programmatic funding to support social and economic development activities in Native American communities. ACF offices such as the Administration for Native Americans, Office of Child Support Enforcement, Office of Community Services, Office of Family Assistance, Child Care Bureau, Children's Bureau, Head Start Bureau and the Family and Youth Services Bureau will be represented.

Tribal leaders and representatives interested in submitting written testimony or topics for the Consultation Session agenda should contact LeeAnna Arrowchis at the Administration for Native Americans toll-free at 1–877–922–9262.

If you are proposing a topic to be addressed in the Consultation Session, please be sure to include a brief description of the topic area along with the name and contact information of the suggested presenter.

The public record will remain open for 60 days following the December 6, 2005, Consultation. Written comment and testimony can be submitted until February 6, 2006.

Dated: October 24, 2005.

Kim Romine,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. 05–21523 Filed 10–27–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 14, 2005 (70 FR 60094). The amendment is being made to reflect changes in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776 or email: *cliffordj@cder.fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 2005, FDA announced that a meeting of the Oncologic Drugs Advisory Committee will be held on November 8, 2005. On page 60094, beginning in the third column, and continuing on page 60095, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: The committee will discuss new drug applications approved under 21 CFR 314.500 and 601.40 (subparts H and subpart E, respectively, accelerated approval regulations) in an open session to do the following: (1) Review the status of phase IV clinical studies; (2) identify difficulties associated with completion of phase IV commitments; and (3) provide advice to sponsors to assist in the planning and execution of postmarketing commitments of newly approved drugs. The committee will discuss phase IV commitments of: (1) New drug application (NDA) 50–718, DOXIL (doxorubicin hydrochloride liposome injection, Johnson and Johnson Pharmaceutical Research and Development, L.L.C.) for the treatment of acquired immune deficiency syndrome (AIDS) related Kaposi's sarcoma in patients with disease that has progressed on prior combination therapy or in patients who are intolerant to such therapy; (2) biologics license application (BLA) 103767/0, ONTAK (denileukin diftitox, Seragen Incorporated) for the treatment of patients with persistent or recurrent cutaneous T-cell lymphoma whose malignant cells express the CD25 component of the interleukin-2 receptor; (3) NDA 21–041, DEPOCYT (cytarabine liposome injection, SkyePharma Inc.) for the intrathecal treatment of lymphomatous meningitis; (4) NDA 21–156, CELEBREX (celecoxib capsules, Pfizer Inc.) for reducing the number of adenomatous colorectal polyps in familial adenomatous polyposis (FAP), as an adjunct to usual care (e.g., endoscopic surveillance, surgery); (5) NDA 21–174, MYLOTARG (gemtuzumab ozogamicin for injection, Wyeth Pharmaceuticals, Inc.) for the treatment of patients with CD33 positive acute myeloid leukemia in first relapse who are 60 years of age or older and who are not considered candidates for other cytotoxic chemotherapy; and (6) BLA 103948/0, CAMPATH (alemtuzumab, ILEX Pharmaceuticals, L.P.) for the treatment of B-cell chronic lymphocytic leukemia (B–CLL) in patients who have been treated with alkylating agents and who have failed fludarabine therapy.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 21, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–21493 Filed 10–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0410]

Prescription Drug User Fee Act; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of October 18, 2005 (70 FR 60536). The document announced a public meeting on the Prescription Drug User Fee Act (PDUFA). The document was published with typographical errors in the **DATES** and **FOR FURTHER INFORMATION CONTACT** sections of the document. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–20875, appearing on page 60536 in the **Federal Register** of Tuesday, October 18, 2005, the following corrections are made:

1. On page 60536, in the second column, the third sentence under **DATES** is corrected to read: ''You may register electronically at *CBERTrainingSuggestions @cber.fda.gov.''*

2. On page 60536, in the second column, in the **FOR FURTHER INFORMATION CONTACT** section, beginning in the fifth line, the telephone number ''301–827–2647'' is corrected to read ''301–827–5902''.

Dated: October 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–21525 Filed 10–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 2, 2005, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD, 301–977–8900.

Contact Person: Cicely Reese, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *ReeseCi@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting. The background material will

become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Psychopharmacologic Drugs Advisory Committee (PDAC).'' (Click on the year 2005 and scroll down to PDAC meetings.)

Agenda: The committee will discuss new drug application (NDA) 21–514, proposed trade name METHYPATCH (Methylphenidate) Tdp, (Methylphenidate Transdermal System), Noven Pharmaceuticals, proposed indication for the treatment of attention deficit hyperactivity disorder (ADHD).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 18, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 18, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cicely Reese at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–21524 Filed 10–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: State/Local/Tribal Hazard Mitigation Plans–Section 322 of the Disaster Mitigation Act of 2000.

OMB Number: 1660–0062.

Abstract: This collection is in accordance with our responsibilities under 44 CFR Part 201 Hazard Mitigation Planning, which requires FEMA's approval and determination of State, local and tribal eligibility for Stafford Act assistance.

Affected Public: State, local and Tribal governments.

Number of Respondents: 1,024 respondents.

Estimated Time per Respondent: The estimated response time for this collection varies depending on the level of government and the scope of the plan. Response time can be as short as 8 hours for a State's review of a local mitigation plan or as long as 2,080 hours for the actual development of a new mitigation plan. On average the collection takes approximately 545 hours.

Estimated Total Annual Burden Hours: 571,200 hours.

Frequency of Response: Once every three years with 3/5 year updates.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: October 21, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–21507 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the Exemption of State-Owned Properties Under Self-Insurance Plan.

SUPPLEMENTARY INFORMATION: 44 CFR part 75 establishes standards with respect to the Federal Insurance Administrator's (FIA) determinations, that a State's plan of self-insurance is adequate and satisfactory for the purposes of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–A30, AE, A99, M, V, VO, V1–V30 and E zones, in which the sale of insurance has been made available. It also establishes the procedures by

which a State may request exemption under Section 102 C of the Act.

Collection of Information

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0013.

Form Numbers: None.

Abstract: The application for exemption is made to the Federal Insurance Administration by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in 44 CFR section 75.11. Upon determining that the State's plan of self-insurance equals or exceeds the standards, the Administrator then certifies that the State is exempt from the requirements for the purchase of flood insurance for State-owned structures and their contents.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 100.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Burden hours per response (C)	Annual responses (A×B)	Total annual burden hours (A×B×C)
Letter application	20	1	5	20	100
Total	20	1	5	20	100

Estimated Cost: Combined cost all respondents is $15,500 or $155.00 per respondent.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may contact Ms. Mary Ann Chang, Insurance Examiner, Federal Insurance Administration, (202) 646–2790. For copies of the proposed collection of information contact the Records Management Section at (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: October 20, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–21508 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

OMB Number: 1660–0008.

Abstract: The Elevation Certificate and Floodproofing Certificate are used in conjunction with the application for flood insurance. The certificates are required for proper rating of post Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after the publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed building elevation information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. Surveyors, engineers, and architects complete the Elevation Certificate. Engineers and architects complete the Floodproofing Certificate. Community officials are provided the building elevation information required to document and determine compliance with the community's floodplain management ordinance. NFIP policyholders/applicants provide the appropriate certificate to insurance agents. The certificate is then used in conjunction with the flood insurance application so that the building can be properly rated for flood insurance.

Affected Public: Individuals or Households, Business or Other for Profit, Not-For-Profit Institutions, Farms, and State, local or tribal government.

Number of Respondents: 48,430.

Estimated Time per Respondent:

Project/activity (survey, form(s), focus group, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (hours) (C)	Annual responses (AxB)	Total annual burden hours (AxBxC)
Elevation Certificate, FEMA Form 81–31 and Instructions.	48,300	One per structure	3.5	48,300	169,050
Floodproofing Certificate, FEMA Form 81–65	130	One per structure	3.25	130	423
Web-based Training Module (Surveyors Video, Surveyors Guide for EC, and Bldg. Diagrams and Photo).	48,300	One per structure	0.25	48,300	12,075
Total	48,430	.....	.....	48,430	181,548

Estimated Total Annual Burden Hours: 181,548 hours.

Frequency of Response: One per Structure.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before November 18, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: October 20, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–21509 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 8 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Livingston Parish for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21504 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 9 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

Lafayette Parish for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21505 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1604–DR]

Mississippi; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 14, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21502 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1606–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1606–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 14, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21503 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1607–DR]

Louisiana; Amendment No. 10 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005, and related determinations.

EFFECTIVE DATE: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 2005:

St. Tammany Parish for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–21506 Filed 10–27–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–08]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Universities Rebuilding America Partnerships: Community Design Program

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 2, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and be sent to, Mr. Mark Menchik, HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management

Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a Notice of Funding Availability for the Universities Rebuilding America Partnerships: Community Design Program.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Universities Rebuilding America Partnerships: Community Design Program.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424–Supplemental, HUD–424–CB, SF–LLL, HUD–27300, HUD–2880, HUD–96010.

Members of the Affected Public: Public or private accredited nonprofit institutions of higher education granting associate degrees or higher in architecture, urban planning and design, or construction.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information subsequent to grant award will be submitted once a year. The following chart details the respondent burden on a semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	80	1600
Semi-Annual Reports	10	10	16	160
Final Reports	10	10	16	160
Recordkeeping	10	10	16	160
Total	.....	.....	128	2080

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 24, 2005.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E5–5969 Filed 10–27–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should

submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Audrey C. Ormerod, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310; (703) 601–2520; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–4548; *GSA:* Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Warren Meekins, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: October 20, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 10/28/05

Suitable/Available Properties

Land (by State)

Idaho

2.3 acre parcel
25822 Middleton Road
Middleton Co: Canyon ID 83644–
Landholding Agency: GSA
Property Number: 54200540006
Status: Excess
Comment: 2.3 acres
GSA Number : 9–I–ID–558

Michigan

Lots 2–6
Lawndale Park Addition
Ludington Co: Mason MI 49431–
Landholding Agency: GSA
Property Number: 54200540007
Status: Excess
Comment: 0.81 acre—undeveloped
GSA Number : 1–G–MI–537–2

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 30113
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200540001
Status: Excess
Reason: Secured Area

4 Bldgs.
Redstone Arsenal
00001, 00003, 00004, 00005
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200540002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 00007, 00008, 00012
Redstone Arsenal
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200540003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 00030, 00035, 00046
Redstone Arsenal
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200540004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 00289, 00291, 00293
Redstone Arsenal
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200540005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 00429, 00431, 00454
Redstone Arsenal
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200540006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

California

Bldgs. 00208, 00210
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540007
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00302, 00306, 00321
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540008
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Camp Roberts
00921, T0929, T2014, T0948
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540009
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1003, T1008
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540010
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Camp Roberts
T1010, T1012, T2009, T2010, T2012
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540011
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1121, T1221, T3014
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540012
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Camp Roberts
T1124, T1224, T3040, T7014
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540013
Status: Unutilized
Reason: Extensive deterioration

54 Bldgs.
Camp Roberts
San Miguel Co: Monterey CA 93451–
Location: T1202–T1209, T1212–T1219, T1302, T3102–T3109, T3112–T3119, T3302–T3309, T3312–T3316, T6102–T6107, T6308–T6309
Landholding Agency: Army
Property Number: 21200540014
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Camp Roberts
San Miguel Co: Monterey CA 93451–

Location: T1222, T1223, T1225, T1226
Landholding Agency: Army
Property Number: 21200540015
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1720, T1721
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540016
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T3001, 03002, T7016
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540017
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Camp Roberts
03003, T4002, T3013, T3015
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540018
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Camp Roberts
T3025, T3037, T3046, T3064
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540019
Status: Unutilized
Reason: Extensive deterioration

22 Bldgs.
Camp Roberts
San Miguel Co: Monterey CA 93451–
Location: 03101, 03110, 03111, 03120, 05011, 06310, T1120, T1201, T1210, T1211, T1220, T1301, T3211, T3220, T3301, T3310, T3311, T4011, T6110, T6111, T6210, T6211
Landholding Agency: Army
Property Number: 21200540020
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Camp Roberts
San Miguel Co: Monterey CA 93451–
Location: 03121, 03122, 03124–03125, T1122, T1123, T1125-T1126
Landholding Agenct: Army
Property Number: 21200540021
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T3321, T3322, T3324
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540022
Status: Unutilized
Reason: Extensive deterioration

Bldg. T3325
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540023
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Camp Roberts 04003, T4004, 04005, T4008, 04015
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540024
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Camp Roberts 05003, 05004, 05005, 05007, 05015
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06043, T6044, 06081
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540026
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06409, T6411
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07006
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540028
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 14002, 14101
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 27110
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540030
Status: Unutilized
Reason:
Extensive deterioration

Bldg. 76910
Camp Roberts
San Miguel Co: Monterey CA 93451–
Landholding Agency: Army
Property Number: 21200540031
Status: Unutilized
Reason: Extensive deterioration

Bldgs. C920, C921, C922
Sandia Natl Laboratories
Livermore Co: Alameda CA 94551–
Landholding Agency: Energy
Property Number: 41200540001
Status: Unutilized
Reason: Secured Area
Extensive deterioration

Federal Supply Warehouse
1070 San Mateo Avenue
San Francisco Co: CA 94080–
Landholding Agency: GSA
Property Number: 54200540009
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–CA–1641

Federal Building
401 San Joaquin Street
Stockton Co: CA 95201–
Landholding Agency: GSA
Property Number: 54200540010
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–CA–1599

Florida

Bldg. 969
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200540014
Status: Unutilized
Reason: Secured Area

Bldgs. 1759, 1760
Naval Air Station
Jacksonville Co: Duval FL–
Landholding Agency: Navy
Property Number: 77200540015
Status: Unutilized
Reason: Secured Area

Bldg. 1917
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200540016
Status: Unutilized
Reason: Secured Area

Georgia

Bldgs. 00227, 00295, 00296
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200540032
Status: Excess
Reason: Extensive deterioration

Bldg. 9021
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200540033
Status: Excess
Reason: Extensive deterioration

Bldgs. 18503, 18504, 18505
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200540034
Status: Excess
Reason: Extensive deterioration

Hawaii

Bldgs. 00013, 00022
Schofield Barracks
Honolulu Co: HI–
Landholding Agency: Army
Property Number: 21200540035
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00025, 00028, 00065
Schofield Barracks
Honolulu Co: HI
Landholding Agency: Army
Property Number: 21200540036
Status: Unutilized
Reason: Extensive deterioration

Bldgs. A1139, 1538
Schofield Barracks
Honolulu Co: HI
Landholding Agency: Army
Property Number: 21200540037
Status: Unutilized
Reason: Extensive deterioration

Iowa

Bldg. 00700
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52601–
Landholding Agency: Army
Property Number: 21200540038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Extensive deterioration

Bldgs. 01091, 01092
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52601–
Landholding Agency: Army
Property Number: 21200540039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Kansas

Bldg. 01987
Fort Riley
Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21200540040
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Atkinson Park Access Site
Tracts 1406, 1406E
Henderson Co: KY
Landholding Agency: GSA
Property Number: 54200540008
Status: Excess
Reason: Floodway
GSA Number: 4–D–KY–0621

Maryland

Bldg. 00279
Fort Detrick
Frederick Co: MD 21702–
Landholding Agency: Army
Property Number: 21200540041
Status: Unutilized
Reason: Secured Area

Bldgs. 877, 887
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540008
Status: Excess
Reason: Extensive deterioration

Bldgs. 1496, 1497, 1498
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540009
Status: Excess
Reason: Extensive deterioration

Bldgs. 1653, 1654, 1655
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540010
Status: Excess
Reason: Extensive deterioration

Bldg. 1663
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540011
Status: Excess
Reason: Extensive deterioration

Bldg. 1697
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540012
Status: Excess
Reason: Extensive deterioration

Bldg. 1766
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200540013
Status: Excess
Reason: Extensive deterioration

Michigan

Bldgs. 01140, 01143, 01145
Grayling Army Airfield
Crawford Co: MI 49739–
Landholding Agency: Army
Property Number: 21200540042
Status: Excess
Reason: Extensive deterioration

9 Bldgs.
Grayling Army Airfield
Crawford Co: MI 49739–
Location: 1150B, 1152B, 1154B, 1156B, 1160B, 1162B, 1164B, 1196B, 01166
Landholding Agency: Army
Property Number: 21200540043
Status: Excess
Reason: Extensive deterioration

Bldgs. 01160, 1172A
Grayling Army Airfield
Crawford Co: MI 49739–
Landholding Agency: Army
Property Number: 21200540044
Status: Excess
Reason: Extensive deterioration

Bldgs. 1176M, 1190M
Grayling Army Airfield
Crawford Co: MI 49739–
Landholding Agency: Army
Property Number: 21200540045
Status: Excess
Reason: Extensive deterioration

Bldgs. 1180B, 1182B, 1194B
Grayling Army Airfield
Crawford Co: MI 49739–
Landholding Agency: Army
Property Number: 21200540046
Status: Excess
Reason: Extensive deterioration

Bldg. 1190A
Grayling Army Airfield
Crawford Co: MI 49739–
Landholding Agency: Army
Property Number: 21200540047
Status: Excess
Reason: Extensive deterioration

Bldgs. 02409, 02414, 02537
Ft. Custer Training Center
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200540048
Status: Excess
Reason: Extensive deterioration

12 Bldgs.
Ft. Custer Training Center
Augusta Co: Kalamazoo MI 49012–
Location: 02415, 02416–02417, 02431–02433, 02505–02507, 02534, 02538–02539
Landholding Agency: Army
Property Number: 21200540049
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
Ft. Custer Training Center
02435, 02434, 02436, 02437
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200540050
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
Ft. Custer Training Center
02441, 02508, 02514, 02530
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200540051
Status: Excess
Reason: Extensive deterioration

New Jersey

Bldgs. P2502, P2522
Fort Dix
Burlington Co: NJ 08640–
Landholding Agency: Army
Property Number: 21200540052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P2503, P2504, P2516
Fort Dix
Burlington Co: NJ 08640–
Landholding Agency: Army
Property Number: 21200540053
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Dix
P2505, P2508, P2507, P2509
Burlington Co: NJ 08640–
Landholding Agency: Army
Property Number: 21200540054
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 5204, 5207
Fort Dix
Burlington Co: NJ 08640–
Landholding Agency: Army
Property Number: 21200540055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 6057, 57473
Fort Dix
Burlington Co: NJ 08640–
Landholding Agency: Army
Property Number: 21200540056
Status: Unutilized
Reason: Extensive deterioration

New York

Bldgs. 01552, 01559
Fort Drum
Jefferson Co: NY 13602–
Landholding Agency: Army
Property Number: 21200540057
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 21434, 22668
Fort Drum
Jefferson Co: NY 13602–
Landholding Agency: Army
Property Number: 21200540058
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 22744, 22772
Fort Drum
Jefferson Co: NY 13602–
Landholding Agency: Army
Property Number: 21200540059
Status: Unutilized

Reason: Extensive deterioration

North Carolina

Bldgs. A4671, A4673, A4854
Fort Bragg
Cumburland Co: NC 28310–
Landholding Agency: Army
Property Number: 21200540060
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 31122, 31124, 31125
Fort Bragg
Cumburland Co: NC 28310–
Landholding Agency: Army
Property Number: 21200540061
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldg. 00040
Carlisle Barracks
Cumberland Co: PA 17013–
Landholding Agency: Army
Property Number: 21200540062
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldgs. 07878, 07882, 07884
Fort Campbell
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540063
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7900
Fort Campbell
Montgomery Co: TN 42223–
Property Number: 21200540064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 7905, 7906, 7907
Fort Campbell
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540065
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Campbell
7908, 7909, 7910, 7911
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540066
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Campbell
7912, 7913, 7914, 7915
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540067
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Campbell
7920, 7921, 7922, 7923
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540068
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 7928, 7929, 7930
Fort Campbell
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200540069
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldgs. 7122, 7125
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200540070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7136
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200540071
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 7152, 7155
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200540072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7167
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200540073
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldg. 55
Fort Myer
Ft. Myer Co: VA 22211–
Landholding Agency: Army
Property Number: 21200540074
Status: Excess
Reason: Extensive deterioration

Wisconsin

Bldgs. M5H33, R0335
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200540075
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 05–21325 Filed 10–27–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Thursday, November 10, 2005–1:30 p.m. to 4 p.m.

ADDRESSES: Lafayette College, 205 Pfenning Center, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware & Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: October 24, 2005.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 05–21538 Filed 10–27–05; 8:45am]

BILLING CODE 6820–P–EM

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Suspension of Trade in Threatened Beluga Sturgeon (*Huso huso*) From the Black Sea Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are suspending import of and foreign commerce in beluga sturgeon (*Huso huso*) caviar and meat originating in the Black Sea littoral states of Bulgaria, Georgia, Romania, the Russian Federation, Serbia and Montenegro, Turkey, and Ukraine effective immediately. This suspension applies to shipments that have been exported directly from these countries, re-exported through an intermediary country, or transported as personal or household effects, and it prohibits foreign commerce in the course of a commercial activity. We are taking this action under the special rule that was promulgated to control the trade of threatened beluga sturgeon (*Huso huso*) (70 FR 10493; March 4, 2005). Interstate

commerce in beluga sturgeon caviar or meat from the Black Sea basin that was legally imported into the United States before the trade suspension is not prohibited.

DATES: This notice is effective October 28, 2005.

ADDRESSES: Black Sea littoral states wishing to provide information that may allow us to lift this trade suspension may submit it by any one of several methods:

1. You may submit written information to Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

2. You may hand-deliver written information to the Division of Scientific Authority, at the above address, or fax your comments to 703–358–2276.

3. You may send information by electronic mail (e-mail) to *ScientificAuthority@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For further information pertaining to compliance with the special rule, contact Robert R. Gabel, Chief, Division of Scientific Authority, at the address above; telephone, 703–358–1708; fax, 703–358–2276. For further information on application procedures and requirements for threatened species permits, contact the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone, 703–358–2104; fax, 703–358–2281.

SUPPLEMENTARY INFORMATION: On April 21, 2004, we listed beluga sturgeon as threatened (69 FR 21425) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). We subsequently published a special rule concerning beluga sturgeon (70 FR 10493; March 4, 2005) under section 4(d) of the Act. The special rule, located at 50 CFR 17.44(y) of our regulations, promotes the conservation of the species by allowing the import, export or re-export, and interstate and foreign commerce of beluga sturgeon caviar and meat, without threatened species permits otherwise required under 50 CFR 17.32, from littoral states in the Caspian and Black Sea basins that demonstrate progress on measures to protect and recover the species. The special rule requires countries wishing to export beluga sturgeon caviar or meat to the United States under this exemption to provide, by September 6, 2005, copies of basin-wide cooperative management plans for beluga sturgeon agreed to by all littoral states in the Black Sea or Caspian Sea basin along with copies of national laws implementing the management plans.

Import of and foreign commerce in Black Sea beluga sturgeon suspended. We have not received a basin-wide management plan for beluga sturgeon from any of the littoral states in the Black Sea basin. We received information from Bulgaria, Georgia, and Serbia and Montenegro, including a copy of a document signed by Bulgaria, Romania, and Serbia and Montenegro in which they agree to implement a regional strategy for conservation and sustainable management of sturgeon populations of the northwest Black Sea and lower Danube River. While we applaud the efforts of these countries in working toward regional cooperation, this regional agreement does not fulfill the requirements of the special rule. Under the special rule, the littoral states are required to submit a basin-wide management plan agreed to by all littoral states in the Black Sea basin (not just exporting countries). A regional plan covering only a portion of the Black Sea is not sufficient to meet this requirement. Bulgaria, Georgia, Romania, the Russian Federation, Serbia and Montenegro, Turkey, and Ukraine have therefore failed to meet the conditions of the special rule. As a result, beluga sturgeon caviar (including products containing caviar, such as cosmetics) and meat from these countries are no longer eligible for the exemption from threatened species permits provided by the special rule. Therefore, you may not import or re-export, sell or offer for sale in foreign commerce, or deliver, receive, carry, transport, or ship in foreign commerce in the course of a commercial activity any beluga sturgeon caviar or meat from these Black Sea countries on or after the effective date of this **Federal Register** notice (see **DATES** section) without a threatened species permit. Beluga sturgeon caviar or meat originating in these countries that has been shipped on or after the effective date of this **Federal Register** notice (see **DATES** section) without a threatened species permit issued under 50 CFR 17.32 will be refused clearance upon arrival in the United States, including shipments that have been exported directly from the countries listed above in this paragraph, re-exported through an intermediary country, or transported as personal or household effects.

Threatened species permits may only be issued for beluga sturgeon from the Black Sea basin if we determine that the proposed import, re-export, or interstate or foreign commerce would meet the regulatory requirements in 50 CFR 17.32. Applicants must demonstrate that their proposed activities would provide for the conservation of the species.

Beluga sturgeon products legally imported before the trade suspension. Beluga sturgeon caviar or meat from Bulgaria, Georgia, Romania, the Russian Federation, Serbia and Montenegro, Turkey, or Ukraine that was legally imported into the United States prior to the trade suspension will continue to be authorized for interstate commerce under the special rule without a threatened species permit. Due to the perishable nature of sturgeon caviar and meat, the exemption for interstate commerce in beluga sturgeon caviar and meat legally imported prior to the trade suspension will continue for a period of no more than 18 months after the date of issuance of the original Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permit, in accordance with the CITES resolution on the ''Conservation of and trade in sturgeons and paddlefish'' (Resolution Conf. 12.7 (Rev. CoP13)). Individuals should maintain accurate records to be able to demonstrate that their beluga sturgeon caviar and meat were legally imported prior to the trade suspension.

Conditions for lifting of the trade suspension. Under the special rule, if the littoral states fail to submit a basin-wide management plan for beluga sturgeon, or if we are unable to confirm that all littoral states in the basin are signatories to the plan, we will immediately suspend trade with all littoral states in the basin until we are satisfied that such a management plan exists. Likewise, under the special rule, if the littoral states fail to submit copies of national laws and regulations that implement the basin-wide management plan, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. For us to consider lifting the trade suspension, the littoral states of the Black Sea basin must submit a basin-wide management plan for beluga sturgeon. This plan must include all the elements specified in the beluga sturgeon special rule and be signed by all littoral states in the basin. In addition, each littoral state wishing to export beluga sturgeon caviar and meat to the United States under the exemption provided by the special rule must submit copies of their national laws that implement the basin-wide plan. Information on how to submit such materials is located in the **ADDRESSES** section.

Aquaculture facilities. The special rule allows aquaculture facilities outside the Caspian and Black Sea

basins to obtain an exemption from threatened species permits otherwise required under 50 CFR 17.32 if they meet certain conditions. We have not yet received any requests for such an exemption. Under the special rule, there is no deadline for receipt of applications from aquaculture facilities seeking an exemption.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 13, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–21534 Filed 10–27–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–069–1610–DP–024E]

Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) for the Upper Missouri River Breaks National Monument, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and under the authority of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) for public land and resources in the Upper Missouri River Breaks National Monument, Montana. BLM invites the public to review and comment on the range and adequacy of the draft alternatives and their associated environmental effects. The DRMP/EIS provides direction and guidance for the management of about 375,000 acres of public land and 42,800 acres of existing oil and gas leases.

DATES: The comment period will end 90 days after the Environmental Protection Agency publishes a Notice of Availability in the **Federal Register** announcing the availability of this DRMP/EIS. In order to assure that comments will be considered, they must be received by BLM on or before the end of the comment period at the address listed below. BLM will hold public meetings during the comment period and will announce their exact time and location at least 15 days in advance through public notices, media news releases, newsletter mailings, and on the following Web site (subject to availability): *http://www.blm.gov/nhp./spotlight/state_info/planning.htm.*

ADDRESSES: Written comments should be sent to: Monument RMP Team, BLM Lewistown Field Office, 920 NE Main Street, PO Box 1160, Lewistown, Montana 59457. Comments may also be sent by e-mail to *MonumentRMP@blm.gov.* Documents pertinent to the DRMP/EIS and written comments, including names and street addresses of respondents, will be available for public review at the Lewistown Field Office at the address above during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Review copies of the DRMP/EIS are available at the following locations in and near the planning area:

BLM Fort Benton River Management Station
BLM Great Falls Oil @ Gas Field Station
BLM Havre Field Station
BLM Lewistown Field Office
BLM Malta Field Office
BLM Montana State Office
Blaine County Library
Lewistown Public Library
Phillips County Library

The DRMP/EIS and other associated documents may also be viewed and downloaded in PDF format at the Monument RMP Web site at *http://www.blm.gov/nhp/spotlight/state_info/planning.htm.*

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list contact Jerry Majerus, RMP Project Manager, at (406) 538–1924, or Gary Slagel, Monument Manager, at (406) 538–1950.

SUPPLEMENTARY INFORMATION: The Upper Missouri River Breaks National Monument is located in northcentral Montana in Blaine, Chouteau, Fergus, and Phillips Counties. The planning area addressed in the RMP comprises about 375,000 acres of public land and 42,800 acres of existing oil and gas leases administered by the BLM Lewistown Field Office. The State of Montana and Blaine, Chouteau, Fergus, and Phillips Counties participated in development of the plan as cooperating agencies.

The public involvement and collaboration process implemented for this effort included 11 public scoping open houses, 11 alternative development workshops, 6 public meetings on oil and gas leases, preparation of comment summary reports, incorporation of recommendations from the Central Montana Resource Advisory Council (RAC), and distribution of information via the Monument RMP Web site and periodic updates and newsletters. BLM has sent copies of the DRMP/EIS to individuals, agencies, and groups who requested them or if this was required by regulation or policy.

For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and can be resolved in this planning process. BLM will publish its responses to the comments in the Proposed Resource Management Plan and Final Environmental Impact Statement. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The DRMP/EIS addresses the following six major questions: How will human activities and uses be managed? What facilities and infrastructure are appropriate to provide visitor interpretation and administration of the Monument? How will BLM manage resource uses and protect the biological, historical, cultural, and visual values of the Monument? How will Monument management be intergrated with other agency and community plans? How will transportation and access be managed? How will Monument management affect economic and social conditions in the area?

The DRMP/EIS considers and analyzes six alternatives (A–F), including the No Action (Continuation of Current Management) alternative. BLM developed these alternatives based on extensive public input, including scoping (July/August 2002); alternative development workshops (July 2003); oil and gas lease meetings (November 2004); numerous meetings with local, state, tribal, and Federal agencies; and recommendations made by the Central Montana RAC. The BLM expects to prepare and make available a Proposed RMP and Final Environmental Impact Statement after reviewing comments and making any pertinent adjustments by summer 2006.

Dated: August 19, 2005.

Martin C. Ott,

State Director.

[FR Doc. 05–21569 Filed 10–27–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923; COC–69155]

Notice of Proposed Withdrawal and Transfer of Jurisdiction; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy has filed an application requesting the Secretary of the Interior to withdraw from surface entry and mining and transfer jurisdiction of 160 acres of public land in Moffat County, Colorado, to be utilized as a uranium mill tailings disposal site. This notice segregates the land for a period of 2 years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received January 26, 2006.

ADDRESSES: Correspondence should be addressed to the State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303–239–3706.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy has filed an application with the Bureau of Land Management to withdraw from surface entry and mining and transfer to them, subject to valid existing rights, the jurisdiction of the following described public land:

Sixth Principal Meridian

T. 7 N., R. 95 W.,
sec. 24, S½NW¼ and N½SW¼.

The area described contains 160 acres in Moffat County.

The purpose of the proposed withdrawal is to transfer jurisdiction of the land to the U.S. Department of Energy for perpetual administration as a hazardous material site under authority of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901, et seq.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed action may present their views in writing to the Colorado State Director, BLM, at the above address.

Comments, including names and street addresses of respondents, and records relating to the proposed withdrawal will be available for public review at BLM Colorado State Office, during regular business hours.

Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

This application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Effective on the date of publication, this land is segregated from all forms of appropriation under the public land laws, including the mining laws, and the mineral leasing laws. The segregative effect of this application will terminate 2 years from the date of this publication unless final withdrawal action is taken or the application is denied or cancelled prior to that date (43 CFR 2310.2). Notice of any action will be published in the **Federal Register**.

Public meetings will be held in connection with the proposed withdrawal action during the preparation of the Environmental Impact Statement that will analyze options for permanent disposal of the uranium tailings. A notice of the time and place will be published by the U.S. Department of Energy in the **Federal Register** at least 30 days prior to the scheduled date of the meetings.

(Authority: 43 CFR 2310.3–1)

Dated: October 7, 2005.

John D. Beck,

Acting Chief, Branch of Lands and Realty.

[FR Doc. 05–21568 Filed 10–27–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923; COC–68632]

Notice of Proposed Withdrawal; Scheduled Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture has filed an application requesting the Secretary of the Interior to withdraw approximately 14,919 acres of National Forest System lands in Douglas, Teller, Park, and Jefferson Counties, Colorado. This notice segregates the lands from location and entry under the U.S. Mining Laws for up to 2 years. This notice also establishes the time and place of the public meeting.

DATES: Comments on this proposed action must be received on or before January 26, 2006.

The public meeting will be held at 7 p.m. on December 15, 2005 at the USDA Forest Service Workcenter, State Highway 126, Buffalo Creek, Colorado 80425.

Requests to be heard at the public meeting should be received by close of business on December 8, 2005.

ADDRESSES: Comments and/or requests to be heard should be submitted to the State Director, Colorado State Office, Bureau of Land Management (BLM), 2850 Youngfield Street, Lakewood, Colorado 80215, or David Crumley, USDA, Forest Service, 2040 Kachina Drive, Pueblo, Colorado 81008.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, 303–239–3706, in Denver, or David Crumley, USDA Forest Service, 719–553–1591 in Pueblo.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, acting through the Forest Service, filed an application with the Bureau of Land Management to withdraw the following identified lands from location and entry under the mining laws, subject to valid existing rights. The outer limit of the area requested is a line drawn in such a manner that each point of it is ¼-mile (U.S. Foot) each side from the middle of the main channels of the South Platte and the North Fork of the South Platte Rivers comprising a ½-mile wide corridor aggregating a length of approximately 71.4 miles. The lands proposed to be withdrawn are described in the following three segments:

Sixth Principal Meridian

Pike—San Isabel National Forest

Segment 1: Elevenmile Canyon Reservoir to Cheesman Lake

Beginning at a point on the South Platte River at the outlet in the Elevenmile Reservoir Dam in sec. 20, T. 13 S., R. 72 W., thence northeasterly along the middle of the main channel of the South Platte River approximately 25.9 miles, ending at a point where the South Platte River exits the east boundary of sec. 22. T. 10 S., R. 71 W.

Segment 2: Cheesman Dam to the High Water Line of the Strontia Springs Reservoir

Beginning on the South Platte River from the stream gage below Cheesman Dam in sec.

6, T. 10 S., R. 70 W., thence northeasterly along the middle of the main channel of the South Platte River approximately 22.6 miles, ending at the high water line of the Strontia Springs Reservoir, in sec. 30, T. 7 S., R. 69 W.

Segment 3: North Fork South Platte River

Beginning on the North Fork of the South Platte River from Insmont (upper end of Berger property) in the NW¼SE¼ of sec. 33, T. 7 S., R. 72 W., thence easterly along the middle of the main channel of the North Fork of the South Platte River approximately 22.9 miles to the confluence with the main stem of the South Platte River in sec. 25, T. 7 S., R. 69 W.

Excepting nonfederal owned surface and mineral estate, and subject to valid existing rights, the provisions of existing withdrawals, and other segregations of record. A land list describing by Township, Range and Section, the Federal lands and interests crossed by the above-described segments and subject to this Notice of Proposed Withdrawal is available from the BLM at the address listed above.

The areas described aggregate approximately 14,919.26 acres in Jefferson, Teller, Park, and Douglas Counties.

The purpose of this proposed withdrawal is to protect important wild and scenic values which have been determined to meet the requirements for inclusion in the National Wild and Scenic Rivers System.

As proposed, the withdrawal would be for a period of 20 years or until Congress determines these segments should or should not be included in the Wild and Scenic Rivers System.

The use of a right-of-way or cooperative agreement instead of a withdrawal would not provide adequate protection for this area due to the broad scope and nondiscretionary nature of the general mining laws.

There are no alternative sites because the area of interest is determined by the location of the rivers.

Water will not be needed to fulfill the purpose of the requested withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director, BLM, or David Crumley, USDA Forest Service, at the above addresses. However, those persons desiring to be heard at the public meeting must submit their requests by December 8, 2005. A list of scheduled speakers will be established. Unscheduled speakers will be heard if time allows.

Comments, including names and street addresses of respondents, and records relating to the proposed withdrawal will be available for public review at the BLM Colorado State Office in Lakewood and the USDA Forest Service Office in Pueblo during regular business hours.

Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the above described lands will be segregated from location and entry under the mining laws as specified above unless the application is denied or cancelled, or the withdrawal is approved, prior to that date. During this period, the lands will continue to be managed by the USDA Forest Service.

(Authority: 43 CFR 2310.3–1)

Dated: October 7, 2005.

John D. Beck,

Acting Chief, Branch of Lands and Realty.

[FR Doc. 05–21570 Filed 10–27–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region, Beaufort Sea Oil and Gas Lease Sale 202, March 2007

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Information (RFI) and Notice of Intent (NOI) to prepare an Environmental Assessment (EA).

SUMMARY: The Secretary's approved 5-Year OCS Oil and Gas Leasing Program for 2002–2007 provides for 3 sales: Sales 186, 195, and 202 to be held in the Beaufort Sea Programlanning Area. The presale process incorporated planning and analysis for all three sales. From the initial step in the process (the Call for Information and Nominations (Call)) through the final Environmental Impact Statement (EIS)/Consistency Determination (CD) step, the process covered the multiple-sale proposals. However, we indicated that we would conduct and did conduct complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act processes for each sale, including a proposed and final Notice of Sale. The environmental analysis and the CD for Sale 202 will focus primarily on new issues, new scientific information, and/or changes in the state's federally-approved coastal management plan.

The Call NOI to Prepare an EIS for Sales 186, 195, and 202 was published in the **Federal Register** on September 19, 2001, at 66 FR 48268. The Beaufort Sea Multiple-Sale Final EIS for these sales was released in February 2003 (OCS EIS/EA, MMS 2003–001). Sales 186 and 195 were held on September 24, 2003, and March 30, 2005, respectively. When the multiple-sale EIS was prepared, MMS indicated it would do an EA for Sales 195 and 202 if no significant new issues or impacts are identified. The MMS is now initiating a RFI for Beaufort Sea Sale 202.

DATES: Comments on the RFI and on the NOI must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled ''Comments on the Request for Information for Beaufort Sea Sale 202'' or ''Comments on the Notice of Intent to prepare an Environmental Assessment'' as appropriate.

FOR FURTHER INFORMATION CONTACT: Please call Steve Flippen at (907) 334–5268 in MMS's Alaska OCS Region regarding questions on the RFI/NOI to prepare an EA.

SUPPLEMENTARY INFORMATION: The environmental analysis and the CD for Sale 202 will focus primarily on new issues and information that may have arisen since the completion of the EIS for Sales 186, 195, and 202 (February 2003) and on any changes that may have occurred in the state's coastal management plan. The process will lead to identification of the area to be included in the proposed Notice of Sale (NOS). Each of these steps, including the proposed NOS, provides for a public comment period. At the culmination of each step and after analysis of any public comments, the MMS will decide whether to proceed to the next step. This process will:

- Focus on the environmental analysis by identifying impact types and levels that may change since the analysis was done for Sales 186 and 195;
- Result in any new issues being more easily highlighted by the public;
- Eliminate issuance for public review the repetitive, voluminous EISs for each sale; and
- Result in a more efficient and responsive application of the NEPA.

The MMS will analyze all comments received in response to this RFI and re-examine information previously submitted in response to the Call and the draft and final EISs for Sales 186, 195, and 202. The MMS will then identify the area to be analyzed in the EA.

This RFI does not indicate a decision to lease in the area described below. Final delineation of the areas for possible leasing will be made after completion of the pre-sale steps described above and in compliance with the current 2002–2007 OCS Oil and Gas Leasing Program and applicable laws, including all requirements of the NEPA and the OCS Lands Act.

Request for Information

1. Authority

This RFI is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356, (1994)) (OCS Lands Act), and the regulations issued thereunder (30 CFR 256), and in accordance with the OCS Oil and Gas Leasing Program 2002–2007.

2. Purpose of Request

The purpose of the RFI is to gather information for Oil and Gas Lease Sale 202 in the Beaufort Sea, scheduled for March 2007. Information on oil and gas leasing, exploration, and development and production within the Beaufort Sea is sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the U.S. Department of the Interior for decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR 256.

The Call published in the **Federal Register** on September 19, 2001, requested information and nominations from industry for Sales 186, 195, and 202 in the Beaufort Sea Planning Area. The MMS will use the information submitted in response to that Call and any new information submitted in response to this RFI to determine the area that will be included in a NEPA analysis. It is not necessary to re-submit comments sent in response to the multiple-sale Call or for industry to re-submit their areas of interest if your comments or indications of interest have not changed since that time. This process seeks to identify new areas of concern and areas of interest to industry.

3. Description of Area

The area that is the subject of this RFI is located offshore the State of Alaska in the Beaufort Sea Planning Area. It extends offshore from about 3 nautical miles to approximately 60 nautical miles, in water depths from approximately 25 feet to 200 feet. A small portion of the outer limits of the sale area north of Harrison Bay drops to approximately 3,000 feet. This area consists of approximately 1,898 whole and partial blocks (about 9.9 million acres). A page-size map of the area accompanies this Notice. The map also shows the four deferral alternatives evaluated in the Beaufort Sea Final EIS for Sales 186, 195, and 202. The Department excluded the Barrow and Kaktovik deferral areas from Sales 186 and 195. A large scale RFI map showing the boundaries of the area on a block-by-block basis is available without charge from the Records Manager at the address given below, or by telephone request at (907) 271–6621. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska, 99503–5823, *http://www.mms.gov/alaska*.

4. Instructions on RFI

The RFI map delineates the area that is the subject of this request. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the RFI area that they wish to have included in Beaufort Sea Sale 202.

If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823.

You may also comment via e-mail to: *akrfi@mms.gov*. Please submit internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: Comments on Request for Information for Beaufort Sea Sale 202'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us via e-mail to: *akwebmaster@mms.gov*.

- You may fax your comments to: MMS at (907) 334–5242.
- Finally, you may hand-deliver comments to: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. We would withhold a respondent's identity, as allowable by law, under certain circumstances. If you wish us to withhold your name and/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.

A. Areas of Interest to the Oil and Gas Industry. The MMS requests industry to submit any new information, including nomination of blocks that are of significant interest for exploration and development and production. Information and nominations submitted in response to the multiple-sale Call for Sales 186, 195, and 202, published on September 19, 2001, (66 FT 48268), will also be considered as information and nominations for the Sale 202 area identification process.

Nominations must be depicted on the RFI map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the RFI map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information. Nominators also are requested to rank blocks nominated according to priority of interest [*e.g.*, priority 1 (high) or 2 (medium)]. Blocks nominated that do not indicate priorities will be considered priority 3 (low). Nominators must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Relation to Coastal Management Plans. Comments also are sought on potential conflicts with approved local coastal management plans that may result from the sale and future OCS oil and gas activities. These comments

should identify specific coastal management plan policy of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale RFI map.

5. Use of Information From the RFI

Information submitted in response to this RFI will be used for several purposes. Responses will be used to:

- Help to further identify areas of potential oil and gas development;
- Identify environmental effects and potential use conflicts not previously addressed in the final EIS and CD for Sales 186, 195, and 202 (OCS EIS/EA, MMS 2003–0010);
- Develop any additional lease terms and conditions/mitigating measures that may be necessary; and
- Identify any potential conflicts between oil and gas activities and the Alaska coastal management plan not addressed in the CDs for Sales 186 and 195.

6. Existing Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Beaufort Sea.

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area is available on the MMS Web site *http://www.mms.gov/alaska*, or may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5280, or by written request at the address stated under Description of Area. A request may also be made via e-mail to: *akwebmaster@mms.gov*.

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to Beaufort Sea Sale 202 covered by this Call:

RFI published–October 2005.
Area Identification–December 2005.
NEPA/ EA Review (or Supplemental EIS) published–July 2006.
Proposed Notice and CD–October 2006.
Final NOS–February 2007.
Tentative Sale Date–March 2007.

NOI To Prepare an Environmental Analysis

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA of 1969 as amended [42 U.S.C. 4321 *et seq.* (1988)].

2. Purpose of NOI

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare an EA for Beaufort Sea Oil and Gas Lease Sale 202, scheduled for March 2007. The EA will be prepared to determine if there are significant new issues or impacts not previously addressed in the EIS for Sales 186, 195, and 202. If no significant new issues or impacts are identified, a Finding of No New Significant Impacts will be issued. If information is submitted in response to this RFI that identifies significant new issues, information, and/or impacts not previously addressed, a supplemental EIS may be prepared.

3. Instructions on NOI

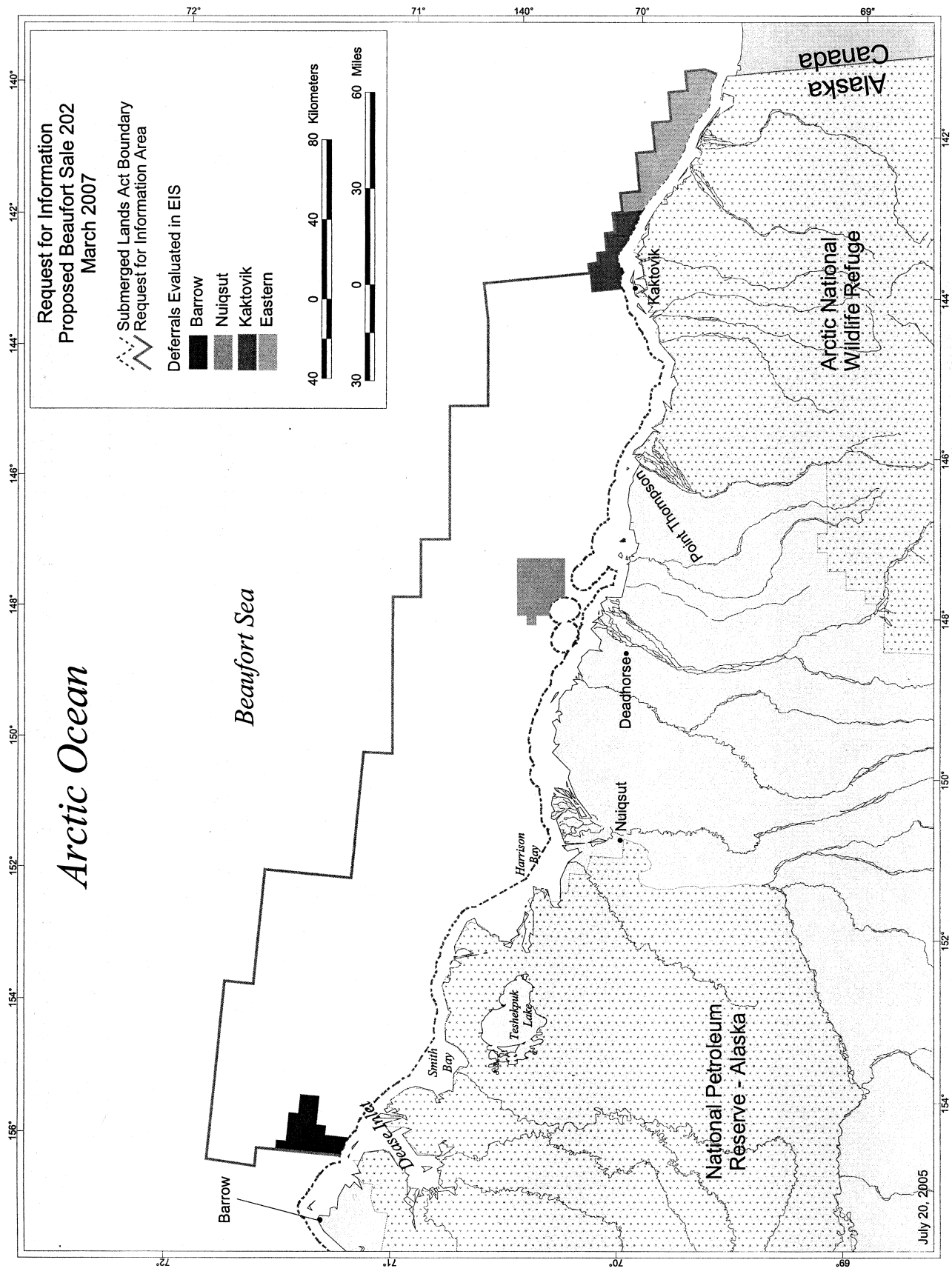
Federal, State, Tribal, and local governments and other interested parties are requested to send their written comments on new information and issues that should be addressed in the EA to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to prepare an Environmental Assessment for Beaufort Sea Sale 202.'' Comments are due no later than 45 days from publication of this Notice.

Dated: October 14, 2005.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 05–21549 Filed 10–27–05; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 21, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of currently approved collection.

Title: Workforce Investment Act (WIA) National Emergency Grant (NEG) Financial Reporting Requirements.

OMB Number: 1205–0434.

Frequency: Quarterly.

Affected Public: State, local or tribal government; Business or other for-profit; and Not-for-profit institutions.

Type of Response: Reporting.

Number of Respondents: 40.

Annual Responses: 320.

Average Response Time: 30 minutes.

Total Annual Burden Hours: 160.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Pursuant to Public Law 105–220, dated August 7, 1998 and WIA Final Rule, 20 CFR 652, et al., dated August 11, 2000. Emergency Grant financial reporting requirements were developed to achieve compliance with the statute. Section 185(e) and (f) require that States report quarterly all program and activity costs by cost category and by year of appropriation, any income or profits earned, and any cost incurred such as stand-in costs that are otherwise allowable except for funding limitations. Sec. 185(g) requires that costs only be categorized as administrative or programmatic costs. The Regulations at 20 CFR 667.300 require that DOL issue financial reporting instructions to the States and other direct grant recipients. These financial reporting requirements represent the Department's only means for obtaining the statutorily required data. Software containing the required data elements has been provided to the grantees (with built-in edit checks) to enable electronic reporting via the Internet.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–21533 Filed 10–27–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 19, 2005, the National Science Foundation published a notice in the **Federal Register** of receipt of a permit modification request. The permit modification was issued on October 21, 2005 to: Rennie S. Holt Permit No. 2002–007 Mod. 1.

Nadine G. Kennedy,

Permit Officer.

[FR Doc. 05–21490 Filed 10–27–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 775, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 19, 2005, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on October 24, 2005, to: Molly F. Miller, Permit No. 2006–022.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–21564 Filed 10–27–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 23, 2005, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on October 24, 2005 to the

following applicant: Michael J. Libecki Permit No.: 2006 WM–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–21565 Filed 10–27–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modification issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 19, 2005, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit modification request received. A modification to a Waste Management permit was issued on October 24, 2005, to the following applicant: Rennie S. Holt—Permit No. 2002 WM–002 Mod. 1.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–21566 Filed 10–27–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05233]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Conopco, Inc., D.B.A. Unilever Research and Development (Unilever), Facility in Edgewater, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Conopco, Inc., d.b.a. Unilever Research and Development (Unilever), for Materials License No. 29–00304–02, to authorize release of its facility in Edgewater, New Jersey, for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Edgewater, New Jersey, facility for unrestricted use. Unilever was authorized by NRC from 1956 to use radioactive materials for research and development purposes at the site. On May 23, 2005, Unilever requested that NRC release the facility for unrestricted use. Unilever has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Unilever. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Unilever's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment Related to an Amendment of U.S. Nuclear Regulatory Commission Materials License No. 29–00304–02, issued to Conopco, Inc. [ML052930082] and the Final Status Survey Report, Unilever Research and Development—Edgewater (URDE), Edgewater, New Jersey, NRC License No. 29–00304–02, May 2005 [ADAMS Accession Nos. ML051780048, ML051780060, ML051780061, ML051780068, ML051780093, ML051780095, ML051780096, ML051780097, ML051780098, ML051780100, ML051780102, ML051780103, ML051780105]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania this 20th day of October, 2005.

For the Nuclear Regulatory Commission

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–5978 Filed 10–27–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52633; File No. SR–Amex–2005–093]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Rule 891 Relating to Transfer Agents

October 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 2005, American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Amex. Amex has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, pursuant to Section 19(b)(3)(A)(i) of the Act,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate Amex's Rule 891 relating to obsolete transfer agent requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 17, 2000, Amex amended its Company Guide to eliminate the qualification of transfer agents, registrars, and bond trustees.[4] Amex believed that the Commission's rules governing transfer agents made Amex's rules unnecessary or inappropriate. However, at that time Amex did not eliminate transfer agent requirements in its rules.

The purpose of this filing is to conform Amex's rules to the changes made to the Company Guide. Rule 891 of Amex's rules currently lists the requirements to qualify as a transfer agent for securities listed on Amex, which includes among other things a requirement to maintain office facilities that are located south of Chambers Street in the Borough of Manhattan, City of New York, that allow the issuer to receive and redeliver securities. In light of the amendments to the Company Guide, Amex has determined that Rule 891 is obsolete and no longer in use and proposes to eliminate that Rule 891.

Section 6(b)(5) of the Exchange Act requires the Amex rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Amex believes the proposed rule change is consistent with Section 6(b) of the Exchange Act[5] in general and furthers the objectives of Section 6(b)(5) of the Act[6] and the rules and regulations thereunder because it makes consistent the requirements of the Company Guide with the requirements in Amex rules and further clarifies the compliance obligations of transfer agents acting for issuers listed on Amex.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. Amex will notify the Commission of any written comments received by Amex.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number* SR–Amex–2005–093 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–093. This file number should be included on the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] The Commission has modified the text of the summaries prepared by the Amex.

[4] Securities Exchange Act Release No. 42539 (March 17, 2000); 65 FR 15672 (March 23, 2000); [File No. SR–Amex–99–39].

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78s(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

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, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Amex and on Amex's Web site, *http://www.amex.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–093 and should be submitted on or before November 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5970 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52649; File No. SR–Amex–2005–063]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options

October 21, 2005.

I. Introduction

On June 9, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate position and exercise limits for options on the Nasdaq 100 Index (''NDX''). The Commission published the proposed rule change for comment in the **Federal Register** on August 26, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Amex proposes to amend its rules to eliminate position and exercise limits for options on the NDX. In connection with this change, options on the NDX would be subject to specific reporting requirements and additional margin provisions imposed by the Amex with respect to options on the Major Market Index (''XMI'') and the Institutional Index (''XII''), the two broad-based index options that, under the Exchange's current rules, are not subject to position and exercise limits.[4]

The Exchange noted that in approving the elimination of position limits for XMI and XII options, the Commission considered the enormous capitalization of each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets.[5] The Amex noted that the market capitalization of NDX, as of June 1, 2005, was $1.86 trillion and the average daily trading volume (''ADTV''), in the aggregate, for the component securities of the NDX, for the period from January 1, 2005 through May 31, 2005 was 425.8 million shares. For the same period, the ADTV for options on the NDX was 45,820 contracts.

The Exchange also stated that in the XMI/XII Permanent Approval Order, the Commission noted that the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in XMI/XII options. The Amex noted that these same financial requirements would apply equally to NDX options. The Exchange further noted that it has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[6] to the extent of any resulting margin deficiency.[7]

The Amex indicated that the Commission, in the XMI/XII Permanent Approval Order, relied substantially on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on XMI and XII options. The Exchange represents that it monitors the trading in NDX options in the same manner as trading in XMI options and that the current Amex surveillance procedures are adequate to continue monitoring NDX options. In addition, the Exchange intends to impose a reporting requirement on Amex members (other than Amex specialists and registered options traders) or member organizations who trade NDX options. This reporting requirement, which is currently imposed on members who trade XMI options, would require members or member organizations who maintain in excess of 100,000 NDX option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Regulation Department. The Exchange also would be permitted to specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[8]

Finally, the Amex proposes to amend Exchange rules relating to the trading of FLEX broad-based index options to eliminate position and exercise limits on FLEX NDX options, and to adopt for NDX FLEX options the same 100,000 contract reporting requirement and additional margin provisions that apply for XMI FLEX options.

The Exchange believes that eliminating position and exercise limits

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 52312 (August 22, 2005), 70 FR 50431 (''Notice'').

[4] According to the Amex, options on the XII are no longer listed and traded on the Exchange.

[5] *See* Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) (order granting permanent approval to the elimination of position and exercise limits on the Major Market index and the Institutional Index) (''XMI/XII Permanent Approval Order'').

[6] 17 CFR 240.15c3–1.

[7] *See* Commentary .03 to Amex Rule 904C. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 16, 2005.

[8] Pursuant to Amex Rule 906, as referenced in Amex Rule 906C(a). Telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 18, 2005.

for NDX options and FLEX options is consistent with Amex rules relating to similar broad-based indexes and would also allow Amex members and their customers greater hedging and investment opportunities.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] The Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[10]

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.

The Commission notes that it continues to believe that the fundamental purposes of position and exercise limits remain valid. Nevertheless, the Commission believes that experience with the trading of index options as well as enhanced reporting requirements and the Exchange's surveillance capabilities have made it possible to approve the elimination of position and exercise limits on certain broad-based index options. Thus, in 2002, the Commission approved an Amex proposal to eliminate permanently position and exercise limits for options on the XMI and XII.[11]

The Commission believes that the considerations upon which it relied in approving the elimination of position and exercise limits for XMI and XII options equally apply with respect to options on the NDX.

As noted by the Amex, the market capitalization of the NDX as of the date of filing of the proposal was $1.86 trillion. The ADTV for the period from January 1, 2005 through May 31, 2005 for all underlying components of the index was 425.8 million shares. The Commission believes that the enormous market capitalization of the NDX and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for NDX options may also bring additional depth and liquidity, in terms of both volume and open interest, to NDX options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that an Amex member or its customer may try to maintain an inordinately large unhedged position in NDX options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[12] Under the proposal, the Amex also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position when it determines a higher requirement is warranted. As noted in the Amex rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, in approving the elimination of position and exercise limits for options on the XMI and XII, the Commission took note of the enhanced surveillance and reporting safeguards that the Amex had adopted to allow it to detect and deter trading abuses that might arise as a result.[13] The Amex represents that it monitors trading in NDX options in the same manner as trading in XMI options. These safeguards, including the 100,000-contract reporting requirement described above, would allow the Amex to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects the Amex to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The Commission further notes that in eliminating position and exercise limits for FLEX NDX options, the Amex is adopting the same additional rules for these options as for FLEX XMI options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2005–063) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5974 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* XMI/XII Permanent Approval Order, *supra* note 5.

[12] *See* Securities Exchange Act Release No. 41011 (February 1, 1999), 64 FR 6405 (February 9, 1999) (notice of filing and order granting accelerated approval to proposed rule change implementing pilot program to eliminated position and exercise limits for XMI and XII options) (''XMI/XII Pilot Approval Order'').

[13] *See*, in particular, XMI/XII Pilot Approval Order, *supra* note 12.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52650; File No. SR-CBOE–2005–41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options

October 21, 2005.

I. Introduction

On May 23, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to amend its rules to eliminate position and exercise limits for options on the Nasdaq 100 Index (''NDX''). The Commission published the proposed rule change for comment in the **Federal Register** on August 26, 2005.[3] On October 5, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The CBOE proposes to amend its rules to eliminate position and exercise limits for options on the NDX, a broad-based security index. In connection with this change, options on the NDX would be subject to specific reporting requirements and additional margin provisions imposed by the CBOE with respect to options on the S&P 500 Index (''SPX''), the S&P 100 Index (''OEX''), and the Dow Jones Industrial Average (''DJX''), the three broad-based index options that, under the Exchange's current rules, are not subject to position and exercise limits.

The Exchange noted that in approving the elimination of position limits for SPX, OEX, and DJX options, the Commission considered the enormous capitalization of each of these indexes and the deep and liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruption in the underlying markets.[5] The CBOE noted that the market capitalization of NDX, as of the date of filing of the proposed rule change, was $1.84 trillion and the average daily trading volume (''ADTV''), in the aggregate, for the component securities of the NDX, for the period three months prior to the date of filing of the proposed rule change, was 420 million shares. For the same period, the ADTV for options on the NDX was 44,008 contracts.

The Exchange also stated that in the SPX/OEX/DJX Permanent Approval Order, the Commission noted that the financial requirements imposed by both the Exchange and the Commission serve to address any concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in SPX/OEX/DJX options. The CBOE noted that these same financial requirements would apply equally to NDX options. The Exchange further noted that it has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3–1 under the Act[6] to the extent of any resulting margin deficiency.[7]

The CBOE indicated that the Commission, in the SPX/OEX/DJX Permanent Approval Order, relied substantially on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on SPX, OEX, and DJX options. The Exchange represents that it monitors the trading in NDX options in the same manner as trading in SPX, OEX, and DJX options and that the current CBOE surveillance procedures are adequate to continue monitoring NDX options. In addition, the Exchange intends to impose a reporting requirement on CBOE members (other than CBOE market-makers) or member organizations who trade NDX options. This reporting requirement, which is currently imposed on members who trade SPX and OEX options, would require members or member organizations who maintain in excess of 100,000 NDX option contracts on the same side of the market, for their own accounts or for the account of customers, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange's Department of Market Regulation. The Exchange also would be permitted to specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[8]

Finally, the CBOE proposes to amend Exchange rules relating to the trading of FLEX broad-based index options to eliminate position and exercise limits on FLEX NDX options, and to adopt for NDX FLEX options the same 100,000 contract reporting requirement and additional margin provisions that apply for SPX and OEX FLEX options.

The Exchange believes that eliminating position and exercise limits for NDX options and FLEX options is consistent with CBOE rules relating to similar broad-based indexes and would also allow CBOE members and their customers greater hedging and investment opportunities.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.[10]

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.

The Commission notes that it continues to believe that the fundamental purposes of position and exercise limits remain valid. Nevertheless, the Commission believes that experience with the trading of index options as well as enhanced reporting requirements and the

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 52313 (August 22, 2005), 70 FR 50433 (''Notice'').

[4] In Amendment No. 1, the CBOE made a technical revision to a table in the rule text of the proposed rule change to reflect that the NDX is the Nasdaq 100 Index (Full Value). This technical amendment did not require notice and comment, as it did not affect the substance of the rule filing.

[5] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order granting permanent approval to the elimination of position and exercise limits on the SPX, OEX, and DJX) (''SPX/OEX/DJX Permanent Approval Order''). *See also* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the original pilot program) (''SPX/OEX/DJX Pilot Approval Order'').

[6] 17 CFR 240.15c3–1.

[7] *See* Interpretation and Policy .04 to CBOE Rule 24.4. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and James M. Flynn, Attorney II, Legal Division, CBOE, on August 12, 2005.

[8] *See* Interpretation and Policy .03 to CBOE Rule 24.4.

[9] In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

Exchange's surveillance capabilities have made it possible to approve the elimination of position and exercise limits on certain broad-based index options. Thus, in 2001, the Commission approved a CBOE proposal to eliminate permanently position and exercise limits for options on the SPX, OEX, and DJX.[11]

The Commission believes that the considerations upon which it relied in approving the elimination of position and exercise limits for SPX, OEX, and DJX options equally apply with respect to options on the NDX.

As noted by the CBOE, the market capitalization of the NDX as of the date of filing of the proposal was $1.84 trillion. The ADTV for the period three months prior to the date of filing of the proposed rule change for all underlying components of the index was 420 million shares. The Commission believes that the enormous market capitalization of the NDX and the deep, liquid market for the underlying component securities significantly reduce concerns regarding market manipulation or disruption in the underlying market. Removing position and exercise limits for NDX options may also bring additional depth and liquidity, in terms of both volume and open interest, to NDX options without significantly increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.

In addition, the Commission believes that financial requirements imposed by both the Exchange and the Commission adequately address concerns that a CBOE member or its customer may try to maintain an inordinately large unhedged position in NDX options. Current risk-based haircut and margin methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[12] Under the proposal, the CBOE also would have the authority under its rules to impose a higher margin requirement upon an account maintaining an under-hedged position when it determines a higher requirement is warranted. As noted in the CBOE rules, the clearing firm carrying the account would be subject to capital charges under Rule 15c3–1 under the Act to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, in approving the elimination of position and exercise limits for options on the SPX, OEX, and DJX, the Commission took note of the enhanced surveillance and reporting safeguards that the CBOE had adopted to allow it to detect and deter trading abuses that might arise as a result.[13] The CBOE represents that it monitors trading in NDX options in much the same manner as trading in SPX, OEX, and DJX options. These safeguards, including the 100,000-contract reporting requirement described above, would allow the CBOE to monitor large positions in order to identify instances of potential risk and to assess and respond to any market concerns at an early stage. In this regard, the Commission expects the CBOE to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. Moreover, as previously noted, the Exchange has the flexibility to specify other reporting requirements, as well as to vary the limit at which the reporting requirements may be triggered.

The Commission further notes that in eliminating position and exercise limits for FLEX NDX options, the CBOE is adopting the same additional rules for these options as for FLEX SPX and OEX options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2005–41) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5973 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* SPX/OEX/DJX Permanent Approval Order, *supra* note 5.

[12] *See* SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[13] *See,* in particular, SPX/OEX/DJX Pilot Approval Order, *supra* note 5.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52659; File No. SR–CBOE–2005–85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Rule Change To Adopt a Market Turner Priority for Index Options and Options on ETFs on the Exchange's Hybrid System

October 24, 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 14, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Hybrid System rule regarding priority and allocation of trades in index options and options on ETFs to adopt a market turner priority. The Exchange has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[5] The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add a market turner priority (which has already been approved for CBOE's screen-based trading (''SBT'') rules) [6] to its Hybrid trading rules for index options and options on ETFs.

In April 2003, the Commission approved the CBOE's SBT rules (Chapters 40–46).[7] CBOE Rule 43.1 is the matching algorithm rule applicable to trading on the SBT platform.[8] The Exchange states that, essentially, CBOE Rule 43.1 calls for the use of either price-time priority or pro-rata priority as the base order allocation methodology. The rule then allows for three additional priority overlays: Public customer priority for public customer orders resting on the SBT system; participation right guarantees for certain qualifying market-makers; and a market turner priority for participants that are first to improve the CBOE's disseminated quote. These overlays are optional.

The Exchange states that recently approved CBOE Rule 6.45B,[9] relating to priority and order allocation for index options and options on ETFs trading on the Exchange's Hybrid System, is based in part on CBOE Rule 43.1 in that it allows for the selection of price-time or pro-rata as an order allocation methodology (CBOE's Ultimate Matching Algorithm is also an option) and allows for customer priority and participation entitlement overlays. The Exchange now seeks to add a market turner overlay to CBOE Rule 6.45B so that index products trading on the Hybrid System may trade with a market turner priority.

Here is how the market turner priority overlay works under CBOE Rule 43.1: assume the pro-rata allocation methodology is in place for option class ABC and that no other overlays are in effect. Also assume that the market for a particular series is 1.00—1.15. If Market-Maker A enters a bid for 1.05 for 100 contracts, Market-Maker A becomes the market turner at 1.05. To the extent others join the 1.05 bid, Market-Maker A would have priority at that price until its bid size is exhausted. Thus, the market turner will receive 100% of an incoming order until its quote is exhausted. This is true even if a 1.10 bid is entered and is then traded while the market turner's 1.05 bid remains unexecuted (*i.e.*, the market turner priority at a given price is retained once it is earned, even if the disseminated quote changes).

The Exchange is proposing to add this priority overlay to its index Hybrid rules,[10] but with flexibility to allow the Exchange to allocate less than 100% of an incoming order to the market turner. For example, taking the same facts as the example described above, assume that the Exchange has in place a 40% allocation for market turners and that Market-Maker A is joined at 1.05 by Market-Maker B for 60 contracts and Market-Maker C for 60 contracts. Also assume a sell market order is received for 100 contracts. As proposed, Market-Maker A would have priority for 40 contracts. The remaining 60 contracts would be divided pro-rata between all three participants at 1.05 (20 contracts to each). Thus, with this ''modified'' market turner priority, Market-Maker A receives 60 contracts of the order (but is only guaranteed 40), whereas under CBOE Rule 43.1, Market-Maker A would be guaranteed 100 contracts. The Exchange states that this is the only material difference between CBOE Rule 43.1 and what the Exchange is proposing to adopt for CBOE Rule 6.45B.

The Exchange is also clarifying in the proposed rule that the market turner priority only remains in effect for the duration of the trading day and that it cannot be established until after the opening rotation.

Finally, the Exchange notes that, like public customer priority and the participation entitlement, the market turner priority is optional. The Exchange states that the appropriate Exchange procedures committee would determine whether one or more of these priority overlays would apply to a product and if more than one is selected, the sequence in which they would apply (consistent with applicable rules). The Exchange states that all determinations would be set forth in a regulatory circular.

2. Statutory Basis

The Exchange states that this change will provide it with another method to reward aggressive pricing in index options and options on ETFs trading on the Hybrid System. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder [14] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The CBOE has satisfied the five-day pre-filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to implement the proposed

[6] *See* Securities Exchange Act Release No. 47628 (Apr. 3, 2003), 68 FR 17697 (Apr. 10, 2003) (SR–CBOE–00–55) (''SBT Order'').

[7] *See* SBT Order.

[8] The Exchange states that no products currently trade pursuant to the SBT rules.

[9] *See* Securities Exchange Act Release No. 51822 (Jun. 10, 2005), 70 FR 35321 (Jun. 17, 2005) (SR–CBOE–2004–87).

[10] The Exchange states that most options trading on CBOE currently trades on the Hybrid System.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

rule change without delay and thereby provide an incentive to parties on the Exchange to quote more aggressively as soon as possible. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–85 and should be submitted on or before November 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5980 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 52652; File No. SR–CHX–2004–17]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Article XX, Rule 37(a)(3) To Eliminate its Requirement That Specialists Guarantee Execution of Limit Orders When Certain Conditions Occur in Another Market

October 21, 2005.

I. Introduction

On June 21, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37(a)(3) of its rules to permit, rather than require, CHX specialists to guarantee execution of limit orders when certain conditions occur in another market. On July 5, 2005, the CHX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37(a)(3), which provides for execution of resting limit orders based on activity in other markets, to eliminate the requirement that CHX specialists guarantee execution of such limit orders when certain conditions occur in another market. For listed issues, the current rule generally obligates a CHX specialist to guarantee execution of limit orders resting in the specialist's book when the issue is being traded in the primary market at a price equal to or better than the limit price. [For Nasdaq securities, the rule permits, but does not require, a CHX specialist to guarantee execution of limit orders resting in the specialist's book, when another market center's quotation locks or crosses the limit price.] The CHX represents that the guarantees set forth in Article XX, Rule 37(a)(3), commonly referred to as ''limit order protection'' or ''primary market protection,'' were voluntarily adopted by the Exchange over 15 years ago to attract order flow.

Under the proposed revision to Article XX, Rule 37(a)(3), the mandate that CHX specialists guarantee execution of resting limit orders for listed issues, based on triggering activity in other markets, would be deleted. Instead, the amended rule would permit CHX specialists to continue to provide such limit order protection guarantees solely on an issue-by-issue basis, on non-discriminatory terms approved by the Exchange. The Exchange's existing functionality providing for automated execution of resting limit orders would remain available for CHX specialists who elect to continue to guarantee limit order protection.[5]

The CHX provided the following rationale for the proposed rule change. First, as the industry has evolved, the Exchange's principal competitors for order flow, namely ''third market'' execution venues and alternative trading systems, do not provide comparable limit order protection guarantees. In addition, CHX order-sending firms now have free access to comprehensive monthly order execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Securities Exchange Act Release No. 51997 (July 8, 2005), 70 FR 40760.

[5] The CHX anticipates that for the foreseeable future, CHX specialists would continue to provide limit order protection voluntarily using the criteria for limit order protection previously set forth in Article XX, Rule 37(a)(3). Should the CHX receive a request from a specialist to alter the voluntary limit order protection criteria and agree to alter the functionality, the Exchange will notify all CHX participants of the change. The Commission believes any such change would need to be filed pursuant to Section 19(b) of the Act.

quality statistics; thus, the CHX believes that ''front-end'' execution guarantees are no longer necessary to attract order flow. Accordingly, the Exchange believes that the guarantee no longer serves a clear competitive purpose. Secondly, since the securities industry converted to decimal trading, the availability of liquidity at a best bid or offer price has declined, making it difficult for the CHX specialist, who chooses to offset his positions in another market, to access liquidity at the price the rule requires him to provide. Consequently, the Exchange believes it is no longer appropriate to mandate that specialists guarantee execution of resting limit orders for listed issues based on activity in other market centers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b)(5) of the Act[7] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission agrees that the environment has changed significantly since the Exchange voluntarily enacted its rule-based execution guarantees, and that consequently, the guarantees may no longer serve to foster competition between the markets.

However, the Commission emphasizes that the deletion of the rule-based mandate regarding limit order protection does not in any way affect a CHX specialist's obligation to provide best execution, nor would it modify any other specialist obligations set forth in Article XXX of the CHX Rules. The Exchange must continue its surveillance of order executions to ensure that CHX specialists meet all of their obligations to each order. The Commission further emphasizes that, to the extent limit order protection guarantees are provided on a voluntary, issue-by-issue basis, such guarantees would have to be provided on a non-discriminatory basis.

[6] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2004–17), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5972 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52647; File No. SR–CHX–2005–01]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Order Priority Rule and the Mandatory Use of Order Match Functionalities

October 21, 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 February 3, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On September 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On October 6, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Article XXX, Rule 2, Precedence to Orders in Book, to clarify the requirements of the Exchange's priority rule and to require specialists to make use of Exchange-provided order match functionalities. The text of the proposed rule change is available on the Exchange's Web site (*http://www.chx.com/rules/proposed_rules.htm*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules generally require Exchange specialists to give precedence to orders in their books for the purchase or sale of securities over orders that originate with the specialists as dealers.[5] Although specialists are not required to yield precedence to professional orders in certain circumstances, specialists are not permitted to trade ahead of customer orders.[6]

The Exchange's systems incorporate several different order match functionalities that are designed to replace proposed specialist executions on a principal basis with executions of eligible customer orders in the specialist's book. These functionalities, among other things, prevent a specialist from manually executing an order on a principal basis when there is a customer

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated September 16, 2005 (''Amendment No. 1). Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 was a partial amendment in which the Exchange corrected errors in the previously filed Exhibit 4. The Exhibit 4 included in Amendment No. 2 replaced the previously filed Exhibit 4 in its entirety.

[5] *See* Exchange Article XXX, Rule 2, Precedence to Orders in Book.

[6] If a specialist accepts a professional order for the book that the specialist is not required to accept under the rules and policies of the Exchange, the specialist is not required to yield precedence to that order over the specialist's principal interest if the orders that originate from the specialist and its customer are limit orders at the same price and the specialist is displaying its interest through the quotation system. *See* Exchange Article XXX, Rule 2. Under the Exchange's rules, a ''professional'' order is an order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Exchange Article XXX, Rule 2, Interpretations and Policy .04.

order on the same side of the book that is eligible for execution.

The Exchange's specialist firms have confirmed to the Exchange that they desire to, and are, using the Exchange-provided order match functionalities that are available to them. The proposed rule change would require specialists to continue such use, except when there are system problems with the order match functionalities [7] or, when two specific types of exceptions arise. The Exchange believes that the proposed rule change would benefit investors by preventing potential trading ahead violations from occurring.

The two exceptions to the general rule requiring use of order match functionalities are relatively narrow. First, the current rule change proposal would add an interpretation to the Exchange's rules to clarify a specialist's obligation to yield precedence to orders when receiving execution reports from other markets at the opening of the Exchange market. Specifically, the proposal would confirm that (1) when a specialist has sought liquidity in a specialty stock in another market with respect to one or more orders in the book, and (2) while waiting for an execution report from the other market, the specialist has executed the order(s) in the book, as principal, pursuant to the preopening order guarantee set out in the Exchange's rules, and (3) the specialist then receives the execution report(s) from the other market at a price equal to the execution(s) given the orders pursuant to the preopening order guarantee, the specialist shall not be required to fill any other customer order(s) in its book as a result of having received the execution report from the other market. These situations may arise at the opening of the Exchange market, in actively-traded stocks, when the Exchange's specialists receive execution reports from other markets after the Exchange receives notice of a print or quote that triggers the execution of preopening orders in the Exchange's specialist book.[8] In these situations, a specialist has executed preopening orders at the guaranteed price and then receives a later report that he has been executed in another market that same price. The Exchange believes that it is appropriate to clarify its precedence rule to confirm that in such situations, a specialist should not be required to provide the execution it receives from another market to an order received after the Exchange's market opened.

Additionally, the Exchange believes that when an Exchange specialist either (1) received an inbound ITS execution in satisfaction of another market center's trade-through of the Exchange's bid or offer (and the specialist has already filled the customer order(s) that constituted the bid or offer traded through); or (2) received an inbound ITS execution in satisfaction of a complaint lodged by an Exchange specialist against another market center, the specialist would not be required fill any other customer order(s) in his or its book as a result of having received the ''satisfying'' ITS execution.[9]

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] The Exchange believes the proposal is consistent with Section 6(b)(5) of the Act [11] because the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed mandatory use of Exchange-provided order match functionalities is specifically designed to protect investor interests. The proposed clarification of the priority rule is designed to confirm the scope of the priority rule, providing both investors and specialists with a more detailed understanding of a specialist's obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-CHX–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-CHX–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[7] The Exchange does not anticipate that systems problems will occur frequently, but has included this exception to the rule to address those relatively rare circumstances when the order match functionality is not operating properly due to unexpected consequences of unrelated systems changes or a software failure. This exception is not intended to allow participants to avoid the use of order match functionalities, but to recognize that there could be limited circumstances when the order match functionalities are malfunctioning. The Exchange anticipates that it would work quickly to correct any software or systems problems that prevented the use of the order match functionalities.

[8] Under Exchange rules, the Exchange generally is open for trading during the hours that a stock trades in its primary market. See Exchange Article IX, Rule 10(b). The opening of the Exchange's market is triggered, in most instances, when the Exchange receives a trade report or quote from other markets. For example, the Exchange's specialists fill orders received before the opening (''preopening orders'') in listed securities at the primary market opening trading price. Preopening orders in Nasdaq/NM securities are filled at a single price that is at or better than the national best bid or offer at the first unlocked, uncrossed market that occurs on or after 8:30 a.m. to the extent that buy and sell orders offset each other.

[9] See Exchange Article XXX, Rule 2, proposed Interpretations and Policy .08.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX–2005–01 and should be submitted on or before November 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5976 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52655; File No. SR–FICC–2005–15]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Charges for Communications Fees To Continue Operating Legacy Communication Networks

October 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 9, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the fees charged to members that fail to migrate their communications systems from legacy networks to The Depository Trust & Clearing Corporation's (''DTCC's'') Securely Managed and Reliable Technology (''SMART'') system [2] or to the Securities Industry Automation Corporation's (''SIAC's'') Secure Financial Transaction Infrastructure (''SFTI'') networks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Beginning in 2003, FICC has periodically informed members of the need to migrate their telecommunications connectivity from SIAC's legacy based Broker and Access networks to DTCC's SMART system or SIAC's SFTI.[4] While several advantages exist in having all members successfully migrate, FICC's main objective in insourcing these services into its own data processing operations is to provide consistent business continuity planning capabilities across all FICC services. In the event of a large-scale regional disruption, any member accessing FICC through a legacy network will not have the benefits provided by the other communications vehicles which could create exposure to these members and their counterparties.[5]

While most FICC members have complied with stated migration requirements, several members continue to access FICC through legacy networks, which is imposing significant unnecessary costs on FICC for continued support of these systems. In order to encourage these members to migrate and in order to equitably allocate costs among its members, FICC intends to allocate its costs for continued support of legacy networks among the members using such systems on a pro rata basis. FICC plans to soon issue an important notice to members specifying the date such fees will become effective.[6]

In order to avoid bearing these costs, members currently using legacy systems are required to take the following actions: (i) As soon as possible, ensure adequate communications connectivity through SMART and/or SFTI, (ii) successfully complete testing through the newly-established pathways, (iii) complete full conversion of all input/output for applicable FICC applications directly to/from FICC through SMART and/or SFTI, and (iv) cancel the legacy network connections.

The proposed change is consistent with Section 17A of the Act [7] and the rules and regulations thereunder applicable to FICC because it will enable FICC to equitably allocate costs among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] SMART is DTCC's centralized, end-to-end managed communications infrastructure that provides connectivity support for all post-trade clearance and settlement processing. Most of the services offered by DTCC's subsidiaries, The Depository Trust Company, the National Securities Clearing Corporation, and FICC are accessible through SMART. SMART is interoperable with SFTI.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] DTCC Important Notices Z#0008, Z#0009, and Z#0010.

[5] SMART is designed to withstand catastrophic disaster scenarios and is set up to operate in DTCC's multiple remote sites to ensure its operability in the event of disruption. Legacy network connections are not automatically configured to ''fail over'' to DTCC's remote processing sites and therefore do not provide members using these networks with the resilience that would be needed in the event of a large-scale regional disruption.

[6] FICC expects that the migration deadline will be set for the end of 2005.

[7] 15 U.S.C. 78q–1.

19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2005–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–FICC–2005–15. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2005–15 and should be submitted on or before November 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5971 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52648; File No. SR–NYSE–2005–63]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Proposal To Place an Immediate Moratorium on the Qualification and Registration of New Competitive Traders and Registered Competitive Market Makers

October 21, 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 September 22, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b-4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is an Information Memo announcing a moratorium on the qualification and registration of new Competitive Traders (''CTs'') and Registered Competitive Market Makers (''RCMMs'') covered in Rules 110 and 107A, respectively. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has decided to study the future viability of CTs and RCMMs in light of the new Hybrid Market environment. While the Exchange conducts this study, it considers it appropriate to place a moratorium on the qualification and registration of new CTs and RCMMs.

CTs and RCMMs were first authorized by the Commission in 1964[5] and 1978,[6] respectively, to generate competition to specialists, add depth and liquidity to the market and create supplemental market making traders on the Exchange. NYSE Rules 110 and 111 govern CTs, and NYSE Rule 107A governs RCMMs. CTs and RCMMs can both conduct proprietary trading under the market maker exemption found in paragraph (1)(A) of Section 11(a) of the Act.[7] CTs' trading must be at least 75% stabilizing, and RCMMs must be ready to enter the market with one round lot if called upon by a floor official or broker to narrow the quotation spread or add liquidity to the market.

The Exchange's rules require that members must be registered by the Exchange before they are able to conduct business as a CT or RCMM, and in order to be registered must, besides

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

[5] NYSE Rule 110 (amended May 21, 1964 and July 16, 1964, effective August 3, 1964).

[6] Securities and Exchange Act Release No. 14718 (May 1, 1978), 43 FR 19738 (May 8, 1978) (SR–NYSE–78–24).

[7] 15 U.S.C. 78k(a)(1)(A).

meeting other requirements, pass an examination prescribed by the Exchange.

The volume and speed of the market has increased dramatically since CTs and RCMMs were first created, and significant changes have occurred with respect to market dynamics. The Exchange believes that these changes coupled with the Exchange's move to a Hybrid Market makes this review timely and appropriate. Currently there are only 11 active RCMMs, and the sole CT has not been active for several years. As part of this review, the Exchange will consider the diminished impact and usage of RCMMs and the effective non-usage of the CT status, the resources required to surveil their trading, and the significant market timing and informational advantage that they enjoy. The Exchange will also examine any regulatory requirements needed to increase market maker liquidity obligations.

The Exchange will issue an Information Memo announcing the moratorium. The Exchange notes that the proposed moratorium will not impact those members currently registered as CTs and RCMMs. Accordingly, during the period that the moratorium is in place, NYSE Rules 110 and 111 and NYSE Rule 107A will continue to govern the actions of current CTs and RCMMs, respectively.[8] The Exchange will promptly file for approval with the Commission any changes to the existing rules that the Exchange determines are warranted upon completion of its review.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2005–63 and should be submitted on or before November 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5975 Filed 10–27–05; 8:45 am]

BILLING CODE 8010–01–P

[8] Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE and Ronesha Butler, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission on October 6, 2005.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection request included in this notice is for revisions to an existing information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written

comments and recommendations regarding the information collection should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, *OPLM.RCO@ssa.gov*.

The information collection listed below has been submitted to OMB for expedited Emergency Clearance. SSA is requesting Emergency Consideration from OMB by 11/14/2005. Your comments on the information collection are requested by that date. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Application for a Social Security Card—20 CFR 422.103–.110—0960–0066. Forms SS–5 (used in the United States) and SS–5–FS (used outside the United States) are used to apply for original and replacement Social Security cards. Changes are being made to these forms to reflect new statutory limits on the number of allowable replacement cards. The respondents are requestors of new or replacement Social Security cards.

Type of Collection: Emergency information collection (revision).

Number of Respondents: 13,600,000.

Frequency of Response: 1.

Average Burden Per Response: 9 minutes.

Estimated Annual Burden: 2,040,000 hours.

Dated: October 20, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–21492 Filed 10–27–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed New System of Records and Proposed Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *Reasonable Accommodation for Persons With Disabilities (RAPD) System, 60–0315,* and routine uses applicable to this system of records. Hereinafter, we will refer to the proposed system of records as the RAPD System. The proposed system of records will consist of information used to provide reasonable accommodations to qualified employees on the basis of disability, the disposition of the requests and the reasonable accommodations provided. We invite public comments on this proposal.

DATES: We filed a report of the proposed new system of records and proposed routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 19, 2005. The proposed system of records and routine uses will become effective on November 28, 2005, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Edie McCracken, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Suite 1500 Dunleavy Building, 6401 Security Boulevard, Baltimore, Maryland 21235, e-mail address at *edie.mccracken@ssa.gov,* or by telephone at (410) 965–6117.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records Entitled the RAPD System

A. General Background

The Rehabilitation Act of 1973, as amended, prohibits certain employers from discriminating based on disability. Section 501 of the Rehabilitation Act (29 U.S.C. 791) applies to Federal agencies and requires that agencies provide reasonable accommodation to qualified employees or applicants with disabilities. Executive Order (E.O.) 13164 requires that Federal agencies establish written procedures to facilitate the provision of reasonable accommodation. An accommodation is a change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodations:

- Modifications or adjustments to a job application process for a qualified individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille);
- Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters); and
- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment (such as removing physical barriers in an office or cafeteria).

The SSA will process requests for reasonable accommodations and, where appropriate, provide reasonable accommodations to qualified employees and applicants for employment in a prompt, fair and efficient manner.

B. Collection and Maintenance of the Data for the Proposed New System of Records Entitled the RAPD System

SSA will collect and maintain the information that will be housed in the RAPD System from employees who have requested reasonable accommodation from SSA officials.

The information maintained in this system of records will be maintained in manual and electronic formats and will include information on all reasonable accommodation requests made by employees. Specifically, it will contain: (1) The employee's name, Social Security number (SSN), medical information collected in the process, number and type of requests made, whether those requests have been granted or denied; (2) the jobs (occupational series, grade level, and Agency component) for which reasonable accommodations have been requested; (3) the types of reasonable accommodations that have been requested for each of those jobs; (4) the number and types of reasonable accommodation requests for each job, by Agency component, that have been approved, and the number and types denied; (5) the number and types of requests that relate to the benefits or privileges of employment, and whether those requests have been granted or denied; (6) reasons for denial; (7) amount of time to process each request; and (8) sources of technical assistance

that have been consulted in identifying possible requests. We will retrieve information from the proposed system of records by using the employee's name and/or SSN. Thus, the RAPD System will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed RAPD System

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed RAPD System as discussed below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent an employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operation of SSA or any of its components, is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

We will disclose information to the EEOC, as necessary, to assist in reassessing individuals' requests for reasonable accommodation, to assist in investigations into alleged or possible discriminatory practices in the Federal sector, to combat and prevent fraud, waste and abuse under the Rehabilitation Act of 1973, and for other functions vested in the Commission.

5. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator, when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator, or the Federal Impasses Panel.

We will disclose information about employees under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, and the Federal Service Impasses Panel, or an arbitrator in which all or part of the allegations involve the Agency's providing reasonable accommodations for employees with disabilities.

6. To the Merit Systems Protection Board, or the Office of the Special Counsel, in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

We will disclose information about employees under this routine use, as necessary, to the Merit Systems Protection Board, or the Office of the Special Counsel, in which all or part of the allegations in the appeal or action involve the Agency's providing reasonable accommodations for employees with disabilities.

7. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement, or similar agreement, with a third party to assist in accomplishing an Agency function relating to this system of records.

8. To student volunteers, individuals working under a personal service contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned Agency duties.

9. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for use by those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

10. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to investigate, prevent, or respond to activities that jeopardize the security and safety of SSA customers, employees or workplaces, or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations permits us to disclose information under a routine use where necessary to carry out SSA programs. SSA Regulations at § 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 8 and number 10 above will ensure efficient administration of the RAPD system; the disclosure that would be made under routine use number 9 is required by Federal law. Thus, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed New System Entitled the RAPD System

SSA will maintain information in the RAPD system in electronic and paper form. Only authorized SSA and contractor personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and by storing computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data in this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed New System of Records Entitled RAPD

The proposed new system of records will maintain only that information which is relevant in providing reasonable accommodations for persons with disabilities so that these individuals can perform the essential functions of their employment positions or other positions the individual seeks. Additionally, SSA will adhere to all applicable provisions of the Privacy Act, Social Security Act and other Federal statutes that govern our use and disclosure of the information. Thus, we do not anticipate that the proposed system of records will have an unwarranted effect on the privacy of the individuals that will be covered by the RAPD System.

Dated: October 19, 2005.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NUMBER:

60–0315

SYSTEM NAME:

Reasonable Accommodation for Persons with Disabilities (RAPD), Social Security Administration, Deputy Commissioner for Human Resources.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION: IN HEADQUARTERS:

Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Office of the Chief Information Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Office of the Chief Strategic Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Office of the Inspector General, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Communications, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Finance, Assessment and Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Human Resources, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Legislation and Congressional Affairs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Operations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Deputy Commissioner for Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

FOR OFFICE OF CENTRAL OPERATIONS:

Manager, Civil Rights and Equal Opportunity Staff, Social Security Administration, Office of Central Operations, Room 7190 SWT, 1500 Woodlawn Drive, Baltimore, Maryland 21241.

REGIONAL ADDRESSES:

Civil Rights and Equal Opportunity Regional Manager, Boston Region, Social Security Administration, Room 1900, John F. Kennedy Federal Building, Cambridge Street, Boston, Massachusetts 02203–1900.

Civil Rights and Equal Opportunity Regional Manager, New York Region, Social Security Administration, Room 40–100 Federal Building, 26 Federal Plaza, New York, New York 10278.

Civil Rights and Equal Opportunity Regional Manager, Philadelphia Region, Social Security Administration, 7th Floor, 300 Spring Garden Street, Philadelphia, Pennsylvania 19123.

Civil Rights and Equal Opportunity Regional Manager, Atlanta Region,

Social Security Administration, Suite 22T64, 61 Forsyth Street, S.W., Atlanta Federal Center, Atlanta, Georgia 30303.

Civil Rights and Equal Opportunity Regional Manager, Chicago Region, Social Security Administration, 10th Floor, 600 West Madison Street, Chicago, Illinois 60661.

Civil Rights and Equal Opportunity Regional Manager, Dallas Region, Social Security Administration, Suite 500, 1301 Young Street, Dallas, Texas 75202.

Civil Rights and Equal Opportunity Regional Manager, Kansas City Region, Social Security Administration, Room 436, 601 East 12th Street, Kansas City, Missouri 64106.

Civil Rights and Equal Opportunity Regional Manager, Denver Region, Social Security Administration, Room 1468, 1961 Stout Street, Denver, Colorado 80294.

Civil Rights and Equal Opportunity Regional Manager, San Francisco Region, Social Security Administration, 6th Floor, 1221 Nevin Avenue, Richmond, California 94801.

Civil Rights and Equal Opportunity Regional Manager, Seattle Region, Social Security Administration, Suite 2900, Mail Stop 291A, 701 5th Avenue, Seattle, Washington 98104.

FOR OFFICE OF HEARINGS AND APPEALS:

Director, Equal Employment Opportunity Staff, Social Security Administration, Office of Hearings and Appeals, Suite 1700, One Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have requested a reasonable accommodation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained in this system of records are collected for all reasonable accommodation (RA) requests made by employees. Specifically:

- The employee's name, Social Security number (SSN), number and types of RA requests and whether those requests have been granted or denied;
- Medical documentation about the disability;
- Occupational series, grade level and Agency component for which RAs have been requested;
- Types of RAs for each job, by Agency component, that have been approved, and the number and types of RA requests that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- Reasons for denial of requests for RA;
- Amount of time taken to process each request for RA; and
- Sources of technical assistance that have been consulted in identifying possible RAs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1974, as amended, 29 U.S.C. 791; Executive Order (E.O.) 13164; Equal Employment Opportunity Commission's Policy Guidance on E.O. 13164; Establishing Procedures to Facilitate the Provisions of Reasonable Accommodation; Directives Transmittal Number 915.003, October 20, 2000.

PURPOSE(S):

Information in this system will be used to provide RAs to qualified employees with disabilities. SSA will provide RAs when:

- A qualified individual with a disability needs an accommodation to be considered for a job;
- A qualified employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
- A qualified employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

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

Disclosure may be made for routine uses as indicated below.

1.To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf. 2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record. 3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

5. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Impasses Panel.

6. To the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be authorized by law.

7. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual, or similar agreement, with a third party to assist in accomplishing an Agency function relating to this system of records.

8. To student volunteer individuals working under a personal services contract, and other individuals performing functions for SSA, but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

9. To the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by the NARA Act of 1984, non-tax return information which is not restricted from disclosure by federal law for the use of those agencies in conducting records management studies.

10. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- to enable them to protect the safety of SSA employees and customers, the

security of the SSA workplace, the operation of SSA facilities, or

• to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

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

STORAGE:

Records in this system are maintained and stored in both electronic and paper form at the systems locations identified above.

RETRIEVABILITY:

Records in this system are retrieved by the employee's name and/or SSN.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data and by storing computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to, or disclosure of, information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records and data created, received, maintained for purposes of tracking agency compliance with Executive Order 13164 and the Equal Employment Opportunity Commission guidance, will be deleted/destroyed in accordance with NARA GRS 1, Sec. 24.

SYSTEM MANAGER(S):

Deputy Commissioner for Human Resources, Associate Commissioner, Office of Civil Rights and Equal Opportunity, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. The individual will be required to submit a request in writing or in person if it is determined that the identifying information provided by telephone is insufficient. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth, and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

An individual who requests access to his or her medical records must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual, who would be willing to explain the contents of the medical record(s) before giving the entire medical record(s) to the individual. These procedures are in accordance with SSA Regulation (20 CFR 401.55).

RECORD ACCESS PROCEDURE(S):

Same as Notification procedures. Requesters should also reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is supplied directly by the requesting individuals and SSA officials.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 05–21491 Filed 10–27–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed the week ending October 7, 2005

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–22659.

Date Filed: October 4, 2005.

Parties: Members of the International Air Transport Association.

Subject: GVA/SRC/003/05 dated 19 August 2005 and GVA/SRC/005 dated August 28, 2005, i.e. Resolution 801r Intended effective date: 1 November 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–21537 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 7, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–8445.

Date Filed: October 4, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 2005.

Description: Application Polar Air Cargo, Inc., requesting renewal of its experimental certificate of public convenience and necessity for Route 626, authorizing it to provide scheduled foreign air transportation of property and mail between the coterminal points Miami, FL and Los Angeles, CA; the intermediate points Curacao, Netherlands Antilles; Santiago, Chile, Barranquilla, Colombia; and Panama City, Panama; and the coterminal points Manaus, Rio je Janeiro and Sao Paulo, Brazil.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–21536 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–04–19857]

Pipeline Safety: Public Meetings on Operator Qualifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting on operator qualification programs. PHMSA is preparing a Report to Congress on the status and results of programs to ensure the qualifications of individuals performing safety tasks on pipelines. The American Society of Mechanical Engineers (ASME) has almost completed developing a consensus standard qualifying individuals performing safety tasks on pipelines. The meeting provides an opportunity to discuss progress on operator qualification programs to help PHMSA prepare the Report to Congress and the potential the ASME standard offers for strengthening operator qualification programs.

DATES: The meeting will take place on December 15, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the L'Enfant Plaza Hotel in Washington, DC, 480 L'Enfant Plaza, SW., Washington, DC 20024. The phone number for reservations at the hotel is 202–484–1000.

FOR FURTHER INFORMATION CONTACT: For more information about the subject matter of this meeting contact *Barbara Betsock* at (202) 366–4361 or Barbara.Betsock@dot.gov. For information about the logistics of this meeting contact: William Fuentevilla at (202) 366–6199, *William.Fuentevilla@dot.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Details

PHMSA will post any additional information or changes on its Web page (*http://ops.dot.gov*) 15 days prior to the meeting date.

Members of the public may attend the meetings and may make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Mr. Fuentevilla, before November 21, of the topic and the time needed for the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may file written comments by mail or deliver them to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may file written comments to the docket electronically by logging onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–04–19857. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. 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.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special support at the meeting, please contact William Fuentevilla at (202) 366–6199 by November 21, 2005.

Background

Pipeline safety regulations issued in 1999 require operators to have programs to ensure the qualifications of individuals performing safety tasks on pipelines. The regulations address operation and maintenance tasks and the ability of individuals to react to abnormal operating conditions to protect life and property. The Pipeline Safety Improvement Act of 2002 amended the pipeline safety law by adding section 49 U.S.C 60131. Section 60131 provides standards and criteria for operator qualification programs, directs PHMSA to ensure their inclusion in programs, and directs PHMSA to report to Congress on the status and results of operator qualification programs. In a final rule published in the **Federal Register** on March 3, 2005, PHMSA changed the operator qualification regulations to conform to section 60131. Among the changes was the required inclusion of training ''as appropriate.'' (70 FR 10332.)

Because of the differences between the performance-based operator qualification regulations and the standards and criteria in section 60131, PHMSA developed protocols and ''Frequently Asked Questions.'' PHMSA and State inspectors use these when auditing operator qualification programs to find out the extent of compliance with the regulations. PHMSA and State inspectors are completing their first audits and collecting information on those audits for the Report to Congress.

The report on the status and results of the operator qualification programs is due December 17, 2006. PHMSA discussed a proposed outline for this report and the early information about

the audits at a meeting on operator qualifications on December 17, 2004. You can read the transcript of that meeting in the docket, RSPA–04–19857, at *http://dms.dot.gov/*. While PHMSA continues to gather data on compliance audits for the report, we believe that we should also include in the report information about safety improvements that go beyond the regulations.

The pipeline industry and PHMSA recognized soon after the protocols were developed that a national consensus standard could provide greater certainty that operator qualification programs are high quality. A public meeting in Houston in 2003 produced a list of 13 areas in which there were perceived gaps between operator qualification programs that conform to the regulations and ''ideal'' programs. The pipeline industry approached ASME International about developing a consensus standard. The result was the B31Q Project Team on Qualification of Pipeline Operators with members drawn from both the regulated pipeline community and the regulators. The ASME committee voted to approve the consensus standard developed and to present it for a 60-day public comment period.

PHMSA believes the considerable work done to qualify pipeline personnel has resulted in improved safety by producing a workforce better able to perform safety tasks on pipelines. PHMSA believes that much of the work has exceeded the requirements of the current regulations. PHMSA also believes the B31Q consensus standard offers an opportunity to further strengthen operator qualification programs. The two purposes of this public meeting are to gather information about improvements in operator qualification programs for the Report to Congress and to identify how we can best use B31Q to strengthen the programs.

Preliminary Agenda

The agenda includes discussion of the following issues:

- Why do we have more confidence today in the qualifications of pipeline personnel?
- What are the primary contributions made during the past four years in improving safety through better qualification programs for pipeline personnel? To what extent have these exceeded regulatory compliance?
- What is the best way to use the B31Q standard to improve programs?
- Are there any elements of the B31Q standard that PHMSA should incorporate into the regulations? If so, which ones would be the best to incorporate?
- Are there any aspects of operator qualification that require greater flexibility to avoid cost impacts with minimal safety benefit?
- Can operators develop performance metrics that could assure equivalent safety through a more flexible performance-based approach?
- How do we continue to improve operator qualification programs without the uncertainty of continual change?
- Are protocols and ''Frequently Asked Questions'' the best way to provide necessary prescription, clarity, and consistency to performance regulations?
- When is training appropriate?
- How does an operator provide enough objectivity in evaluating an employee's knowledge and skills?
- Should the regulations go beyond operation and maintenance and include additional tasks that affect the safety and integrity of the pipeline as covered tasks?
- How do we best foster the portability of qualifications?
- Should emergencies such as Katrina trigger exceptions?
- Would mechanisms for operators to share success stories about operator qualification benefit overall safety?

Issued in Washington, DC on October 24, 2005.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05–21499 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday,
October 28, 2005

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 224

Reflectorization of Rail Freight Rolling Stock; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 224

[Docket No. FRA–1999–6689, Notice No. 6]

RIN 2130–AB68

Reflectorization of Rail Freight Rolling Stock

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration; lift of stay of effectiveness.

SUMMARY: This document responds to petitions for reconsideration of FRA's January 3, 2005 rule mandating the reflectorization of freight rolling stock (freight cars and locomotives). This document amends and clarifies the final rule and also lifts the stay of the rule's effectiveness published on May 26, 2005 (70 FR 30378).

DATES: *Effective Date:* The stay of effectiveness for 49 CFR part 224 is lifted and the amendments in this rule are effective as of November 28, 2005. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the Federal Register as of November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Tom Blankenship, Mechanical Engineer, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 25, Washington, DC 20590 (telephone: 202–493–6446); or Lucinda Henriksen, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., Mailstop 10, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2003, the Federal Railroad Administration (FRA) published a notice of proposed rulemaking (NPRM) proposing to require retroreflective material on the sides of freight rolling stock (freight cars and locomotives) to enhance the visibility of trains. *See* 68 FR 62942. The proposals set forth in the NPRM were based on several years of research and public involvement in the reflectorization issue. The NPRM provided detailed background information on the need for the reflectorization of rail equipment as well as a description of FRA's research and public outreach efforts aimed at identifying the most effective method for implementing a nationwide reflectorization program. Following consideration of written comments received in response to the NPRM and oral comments presented at a public hearing held in Washington, DC, on January 27, 2004, FRA published a final rule on January 3, 2005. *See* 70 FR 144.

Following publication of the final rule, three parties (the Association of American Railroads (AAR), TTX Company (TTX), and 3M) filed petitions seeking FRA's reconsideration and clarification of certain provisions of the rule. *See* document numbers 123 and 125–130 in the docket of this proceeding. In order to ensure that the regulated community would not be faced with possible changes to the rule soon after beginning compliance, and to provide FRA adequate time to respond to the petitions, on May 26, 2005, FRA stayed the effectiveness of the final rule until further notice could be published in the **Federal Register**. *See* 70 FR 30378.[1]

The specific issues raised by these petitioners and FRA's responses to their petitions, are discussed in detail below in the ''Section-by-Section Analysis'' portion of the preamble. The Section-by-Section analysis also contains a detailed discussion of each provision of the final rule which FRA has amended or clarified. The amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and options discussed, considered, or raised in the NPRM.

Statutory Authority and Congressional Mandate

FRA has broad statutory authority to regulate all areas of railroad safety. The Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49) grants the Secretary of Transportation (''Secretary'') rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49). (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into Title 49.)

[1] FRA notes that the May 26, 2005 **Federal Register** publication inadvertently included the original RIN number for this proceeding (RIN 2130–AB41).

The term ''railroad'' is defined in the Safety Act to include any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, * * * [other than] rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

49 U.S.C. 20102. This definition makes clear that FRA has jurisdiction over (1) rapid transit operations within an urban area that are connected to the general railroad system of transportation, and (2) all freight, intercity, passenger, and commuter rail passenger operations regardless of their connection to the general railroad system of transportation or their status as a common carrier engaged in interstate commerce. FRA has issued a policy statement describing how it determines whether particular rail passenger operations are subject to FRA's jurisdiction (65 FR 42529 (July 2, 2000)); the policy statement can be found in Appendix A to parts 209 and 211.

Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad track, signal systems, railroad communications, rolling stock, rear-end marking devices, safety glazing, railroad accident/incident reporting, locational requirements for dispatching of U.S. rail operations, safety integration plans governing railroad consolidations, merger and acquisitions of control, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety.

In 1994 Congress passed the Federal Railroad Safety Authorization Act of 1994, Pub. L. 103–440 (Act). The Act added § 20148 to title 49 of the United States Code. Section 20148 required the Secretary, and by delegation, FRA, to conduct a review of the Department of Transportation's (Department) rules with respect to the visibility of railroad cars and mandated that if the review established that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary initiate a rulemaking proceeding to ''prescribe regulations requiring enhanced visibility standards for newly manufactured and remanufactured railroad cars.'' Section 20148 specifically directed the Secretary to examine the use of reflectors. Section 20148 reads as follows:

(a) *Review of Rules.*—The Secretary of Transportation shall conduct a review of the Department of Transportation's rules with respect to railroad car visibility. As part of this review, the Secretary shall collect relevant data from operational experience by railroads having enhanced visibility measures in service.

(b) *Regulations.*—If the review conducted under subsection (a) establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary shall initiate a rulemaking proceeding to prescribe regulations requiring enhanced visibility standards for newly manufactured and remanufactured railroad cars. In such proceeding the Secretary shall consider, at a minimum—

(1) visibility of railroad cars from the perspective of nonrailroad traffic;

(2) whether certain railroad car paint colors should be prohibited or required;

(3) the use of reflective materials;

(4) the visibility of lettering on railroad cars;

(5) the effect of any enhanced visibility measures on the health and safety of train crew members; and

(6) the cost/benefit ratio of any new regulations.

(c) *Exclusions.*—In prescribing regulations under subsection (b), the Secretary may exclude from any specific visibility requirement any category of trains or railroad operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety.

FRA has carried out this rulemaking in accordance with § 20148 of the Act.

Section-by-Section Analysis

Amendments to 49 CFR Part 224

Subpart A—General

Section 224.3 Applicability

This section establishes that the rule applies, with certain exceptions, to all freight cars and locomotives that operate over a public or private highway-rail grade crossing and are used for revenue or work train service. This section specifically excludes certain operations and equipment from the rule. The exclusions include: (1) Freight railroads that operate only on track inside an installation that is not part of the general railroad system of transportation, (2) rapid transit operations within an urban area that are not connected to the general system of transportation, and (3) locomotives or passenger cars used exclusively in passenger service.

AAR petitioned FRA for reconsideration of this section, noting that some equipment moving on the rails (e.g., RoadRailer® equipment) is subject to other government reflectorization requirements which may conflict with FRA's requirements. Accordingly, AAR requested that § 224.3 be revised to provide that freight rolling stock subject to the reflectorization requirements of a government agency other than FRA, be excluded from the rule.

FRA agrees with AAR's concern regarding this section. FRA notes that some railroad equipment is capable of operating on both highways and railroad tracks. For example, RoadRailers®, RailRunners®, Railmates® and other rail-compatible vehicles are capable of being hauled by trucks on the nation's roads, and are also capable of being hauled on railroad tracks. When the equipment is operated on roadways, it is subject to the National Highway Transportation Safety Administration's (NHTSA) reflectorization requirement (49 CFR part 571). NHTSA requires that large highway trailers be equipped with red and white retroreflective material along both the sides and rear. *See* 49 CFR 571.108. Although rail-compatible vehicles such as RoadRailers®, RailRunners®, and Railmates®, effectively become freight cars for purposes of FRA regulation when the equipment is operating on railroad track, because rail compatible vehicles are equipped with retroreflective material pursuant to NHTSA's rule, FRA does not see any safety justification for also subjecting this equipment to FRA's reflectorization requirement. FRA believes doing so would create confusion and an unnecessary burden on the equipment owners in requiring them to comply with two different reflectorization standards.

Accordingly, FRA has added paragraph (d) to § 224.3 which specifically excludes freight rolling stock subject to reflectorization requirements of other Federal agencies from this rule's applicability.

Section 224.5 Definitions

This section defines various terms which for purposes of this rulemaking have very specific meanings. FRA intends the definitions in this section to clarify the meaning of these terms as they are used in the text of the final rule. In response to the final rule, AAR petitioned FRA for reconsideration of the definitions of two terms used in the rule, the terms ''damaged'' and ''freight rolling stock.''

In response to commenters' concerns regarding the term ''damaged'' used in § 224.109 of the proposed rule, in the final rule FRA defined the term to mean ''scratched, broken, chipped, peeled, or delaminated.'' As noted in the preamble to the final rule, FRA intended this definition to be consistent with the term ''obscured.'' [2] The definition, however, was also designed to recognize the physical reality that retroreflective sheeting could be damaged to the extent that it is no longer effective, but still not be ''obscured'' as defined in the rule (i.e., if material is scratched, broken, chipped, peeled, or delaminated, the material cannot effectively reflect light).

AAR petitioned FRA for reconsideration of this definition, expressing the view that as defined, the term is ''ambiguous and can be interpreted as requiring replacement of an entire strip of sheeting if there is any marring, even a single minute scratch, regardless of whether the retroreflectivity of the sheeting is meaningfully affected.'' FRA does not agree with AAR's concern. The definition and use of the term ''damaged'' in the final rule is an objective measure, only requiring maintenance when more than 20 percent of the minimum required amount of material on each rail car or locomotive side is ''damaged'' (i.e., when more than 20% of the material is scratched, broken, chipped, peeled or delaminated). Specifically, § 224.109 of the final rule provides that if more than 20 percent of the required amount of sheeting on either side of a freight car or locomotive is ''damaged, obscured, or missing, that damaged, obscured, or missing sheeting must be repaired or replaced.'' If there is a ''single minute scratch'' on the retroreflective sheeting covering only a tiny area of the sheeting, that material is ''damaged'' as defined in the rule, but that material, by itself, does not require repair or replacement as it has not been damaged beyond the 20% threshold. If, however, 25% of the retroreflective material on one side of a freight car or locomotive is ''scratched, broken, chipped, or peeled,'' that material would need to be repaired or replaced in accordance with § 224.109.[3]

AAR also petitioned FRA for reconsideration of the definition of the term ''freight rolling stock'' in the final rule. The final rule defined ''freight rolling stock'' as ''(1) [a]ny locomotive subject to part 229 of this chapter used to haul or switch freight cars (whether in revenue or work train service); and (2) [a]ny railroad freight car subject to part 215 of this chapter (including a car stenciled MW pursuant to § 215.305).'' Noting that the stenciling requirement of § 215.305 applies to self-propelled maintenance-of-way equipment, AAR expressed the view that FRA's definition included ''specialized maintenance-of-way equipment''

[2] The term ''obscured'' was defined in the final rule to mean ''concealed or hidden (i.e., covered up, as where a layer of paint or dense chemical residue blocks all incoming light).'' 49 CFR 224.5. The definition specifically excluded ''ordinary accumulations of dirt, grime, or ice resulting from the normal railroad operating environment.''

[3] Note that as discussed in the analysis of § 224.109 below, this ''more than 20%'' maintenance threshold has been revised to clarify FRA's intent as to what amount of material needs to be ''damaged, obscured, or missing'' thereby requiring maintenance.

contrary to FRA's stated intent. AAR specifically noted that in the preamble to the final rule, FRA expressed agreement with AAR's view that reflectorizing specialized maintenance-of-way equipment (e.g., burro cranes, hi-rail equipment) would not help achieve the rule's stated goals (i.e., reducing the number and severity of grade crossing accidents where motor vehicles run into trains after the first two units of the consist).

FRA agrees with AAR's concern that the definition of ''freight rolling stock'' in the final rule does not reflect FRA's true intent. Specifically, FRA intends the definition to include any locomotive subject to 49 CFR part 229 used to haul or switch freight cars and all railroad freight cars, whether those cars are used in revenue or work train service. FRA does not intend the term ''freight rolling stock'' to include on-track roadway maintenance equipment subject to subpart D of 49 CFR part 214 or similar specialized maintenance-of-way equipment (such as burro cranes or hi-rail inspection vehicles). Accordingly, FRA has revised the definition of ''freight rolling stock'' to mean ''(1) [a]ny locomotive subject to Part 229 of this chapter used to haul or switch freight cars (whether in revenue or work train service); and (2) [a]ny railroad freight car (whether used in revenue or work train service).'' [4]

As discussed in the analysis of § 24.109 below, FRA has also revised the final rule to include a definition of the term ''Universal Machine Language Equipment Register'' in order to clarify the notification requirements of § 224.109.

Section 224.103 Characteristics of retroreflective sheeting

This section sets forth the construction, color, and performance standards for the retroreflective sheeting required by § 224.101. Paragraphs (b) and (c) of this section of the final rule required that retroreflective sheeting meet specific minimum photometric performance requirements as initially applied (i.e., minimum coefficient of retroreflection values) and the color and durability requirements of ASTM International's (ASTM) standard D 4956–01a, *Standard Specification for Retroreflective Sheeting for Traffic Control* for Type V sheeting. AAR and 3M, respectively, petitioned for reconsideration of each of these paragraphs.

AAR petitioned for reconsideration of paragraph (b), noting that ASTM standard D 4956–01a incorporated into the final rule has been superseded by a newer version of the standard, ASTM D 4956–04. AAR expressed the view that FRA should incorporate this revised standard into the rule.

FRA notes that Standard D 4956–01a was revised in late 2004, just prior to the final rule's publication. FRA also notes that the revised Standard (D 4956–04) is substantially the same as the previous version, except that it provides specifications for certain types of fluorescent retroreflective sheeting and adds a new type of retroreflective material, Type X. The construction and performance requirements related to Type V retroreflective material in ASTM D 4956–04 remain unchanged from the requirements in ASTM D 4956–01a. For the more specific reasons discussed below, FRA believes that this newer, revised version of the standard should be incorporated into the final rule. Thus, paragraph (b) has been revised to incorporate by reference ASTM D–4956–04, not ASTM D 4956–01a.[5]

3M petitioned for reconsideration of paragraph (c) expressing the view that the requirement that retroreflective sheeting meet the performance requirements of ASTM Type V sheeting was adopted in the final rule without an opportunity for notice and comment and that this requirement effectively excludes materials that the proposed rule would have allowed, i.e., some types of ordinary-colored (not fluorescent) non-metalized yellow retroreflective material and fluorescent yellow retroreflective material. Specifically, 3M noted that ASTM D 4956 allows a daytime luminance factor (Y%) of up to 45 for ordinary-colored yellow non-metalized material,[6] but that any Y% over 30 would not satisfy the requirements of the final rule (non-metalized materials with Y% values over 30 would presumably have been allowable under the proposed rule since the NPRM did not specify any limits on Y%). 3M further explained that the final rule's ''reference to Type V requirements prohibits the use of fluorescent yellow sheeting because fluorescent pigments raise the Y% value of fluorescent materials above 30.'' 3M also noted that in both the NPRM and the preamble to the final rule, FRA recognized the effectiveness of fluorescent material and the potential additional daytime benefits of the material, as compared to ordinary-colored material. 3M pointed out that in both the NPRM and the preamble to the final rule, FRA specifically stated that fluorescent material was acceptable under the rule, provided it met all the requirements of the rule, and that nothing either in the NPRM or the final rule document indicated that FRA intended to exclude fluorescent retroreflective material from suitability under the rule. 3M further asserted that the ''root cause'' of this inconsistency between the proposed rule and the final rule is ''the application of a specification intended for metalized products [Type V retroreflective material] to non-metalized products.'' To rectify this apparent inconsistency between the NPRM and final rule, 3M recommended revising paragraph (c) to require conformance to ASTM D 4956–04 Type V requirements for metalized retroreflective material and conformance to ASTM D 4956–04 Type IV requirements for non-metalized material.

As originally proposed, paragraph (c) of this section required that retroreflective sheeting applied in accordance with the rule meet all the performance requirements, except for the minimum photometric performance requirements, of the then current ASTM Standard D 4956. The initial minimum values for the coefficient of retroreflection (i.e., initial minimum photometric performance requirements) of the FRA standard were set forth in Table 1 of the proposed rule. In other words, the proposed rule would have allowed the use of any ASTM D 4956 ''Type'' of material provided the material met the color requirements for yellow or white specified in the ASTM standard and FRA's specific photometric performance requirements. As such, the proposed rule contemplated the use of both metalized and unmetalized microprismatic retroreflective material.

Although the final rule retained the initial minimum coefficient of retroreflection values (i.e., minimum photometric performance requirements) of the proposed rule, paragraph (c) of this section was revised with the intent to clarify an ambiguity in the proposed rule's color requirement. Specifically, in response to the NPRM, Avery Dennison, a manufacturer of retroreflective material, pointed out that ASTM standard D 4956 contains three yellow color standards, all referencing the same chromaticity coordinates, but with three different daytime luminance factors (Y%). *See* document no. 98 in the

[4] The final rule defined ''railroad freight car'' in accordance with 49 CFR 215.5.

[5] Just prior to issuance of this current notice, FRA became aware that ASTM Standard D 4956–04 had been revised and replaced with a newer version of the standard, D 4956–05. Because, Standard D 4956–05 remains substantially the same as the previous version, D 4956–04, FRA does not believe it is necessary to incorporate into the final rule this revised version of the standard.

[6] *See* ASTM D 4956–04, Table 10.

docket of this proceeding. Avery Dennison further explained that if FRA did not specify a minimum Y% for the yellow retroreflective sheeting contemplated by the rule, retroreflective sheeting that appeared brown could meet the stated color requirement. Accordingly, Avery Dennison recommended that FRA adopt a minimum Y% of 12 for yellow sheeting. This Y% of 12 is the minimum Y% specified in both ASTM D 4956–01a and ASTM D 4956–04 for yellow, Type V sheeting.

In response to Avery Dennison's comments and in an attempt to clarify this ambiguity, as well as to ensure that only high-contrast colored sheeting would meet the performance requirements of the rule, in the final rule FRA modified the performance requirements contained in paragraph (c) to specify that retroreflective sheeting applied pursuant to the rule must meet the performance requirements (except for the minimum photometric performance requirements) of Type V sheeting as defined in ASTM Standard D 4956–01a. The intent of this revision was merely to clarify the retroreflective material performance requirements contemplated by the proposed rule, not to change the requirements or limit the number of materials that would meet these requirements. However, when FRA revised paragraph (c) to require compliance with ''Type V'' performance requirements, FRA unintentionally did more than clarify the requirements of the proposed rule by indicating a minimum Y% as recommended by Avery Dennison; FRA not only incorporated Type V's minimum Y%, but by the nature of specifying ''Type V,'' incorporated Type V's maximum Y% as well. The maximum Y% for yellow, Type V sheeting is 30. *See* Table 12 of ASTM D 4956–04. As 3M noted in its petition, this maximum Y% of 30 is well below the maximum Y% specified for ordinary-colored yellow non-metalized material in ASTM D 4956–01a and –04 and the maximum Y% of 30 is also well below the minimum Y% specified in ASTM D 4956–04 for fluorescent yellow non-metalized material. *See* Tables 6, 10 and 14 of ASTM D 4956–04. Thus, by incorporating both the minimum and maximum Y% of Type V retroreflective materials (the only metalized retroreflective material included in the ASTM specification), FRA effectively precluded the use of some ordinary-colored non-metalized materials and the use of fluorescent yellow retroreflective material.

As explained in section 4 of the ASTM standard, ''[t]ypes are determined by conformance to the retroreflectance, color, and durability requirements listed'' in the standard. Because the final rule specifies initial minimum coefficient of retroreflectance values, the applicable ASTM requirements relate to the color and durability of the retroreflective material. Specifically, by requiring that retroreflective sheeting meet the color and durability requirements of ASTM Type V sheeting, the final rule effectively requires that retroreflective material (1) have a minimum Y% of 12 and maximum Y% of 30; (2) conform to specific chromaticity coordinates; (3) after an outdoor weathering period of 36 months, maintain its color within the specified color box (determined by the chromaticity coordinates) and within the specified Y% range; and (4) after the specified outdoor weathering period have a coefficient of retroreflection equal to at least 80% of that specified in Table 1 of the final rule. *See* §§ 6.1.5, 6.3, 6.4 and 6.5 of ASTM D 4956–04.

In comments submitted to the docket in support of its petition, 3M noted that excluding materials with lower durability requirements (i.e., ASTM Types I and II materials), the durability requirements for the remaining Types of sheeting specified in ASTM D 4956 (e.g., Types III, IV, V, VII, VIII and IX) are identical.[7] *See* document no. 133 in the docket of this proceeding. Given that the final rule itself specifies the required initial minimum coefficient of retroreflectance values for the retroreflective material, 3M further noted that the only remaining difference among the five types of sheeting having the same durability requirements as Type V is the Y%. 3M explained that ''the minimum-maximum daytime luminance ranges for Type V and III sheeting are lower than that of non-metallized prismatic Types IV, VII, VIII and IX because Type V and Type III were established for sheetings with metallic coatings, which tend to appear greyer in daylight than do non-metallized construction.'' 3M further explained that metalizing lowers the daytime luminance of retroreflective sheeting. Accordingly, 3M indicated that non-metalized yellow sheeting can have substantially higher Y% values without losing colorfastness. This fact is evidenced by ASTM's inclusion of multiple Y% requirements for different types of sheeting in the D 4956 Standard. *See* Tables 6, 10, 12 and 14 in ASTM Standard D 4956–04. As explained above, however, despite these differing Y% requirements for metalized and non-metalized retroreflective sheeting, the sheeting must meet the same durability (i.e., weathering and colorfastness) requirements as metalized sheeting.

With regard to fluorescent yellow sheeting, the second point raised in 3M's petition, FRA notes that fluorescence is a daytime phenomenon, i.e., fluorescence increases daytime conspicuity, but has virtually no effect at night. Accordingly, in both the NPRM and in the preamble to the final rule, although FRA acknowledged the potential benefit of fluorescent retroreflective material, FRA did not require the use of such material. Instead, FRA specifically stated that although fluorescent material is not required under the rule, it may be used if it meets all of the requirements of the rule. *See* 68 FR 62954 and 70 FR 155.

As explained above, however, an inconsistency exists between FRA's stated intent to allow, but not require, fluorescent material and the final rule's requirement that retroreflective sheeting meet the performance requirements (except for the initial minimum photometric performance requirements) of ASTM D 4956 Type V sheeting. Specifically, fluorescent retroreflective materials are characterized by high Y% values (i.e., high daytime luminance factors) and, according to 3M, ''there is no way to supply a high visibility fluorescent yellow material with daytime luminance values as low as the range set for Type V sheeting.''

As noted above, the most recent ASTM D 4956 standard (D 4956–04) provides specifications for certain types of non-metalized fluorescent retroreflective sheeting (i.e., Types IV, VI, VII, VIII, IX and X). *See* Table 14 of ASTM D 4956–04 (requiring a minimum Y% of 45 for fluorescent yellow material). ASTM D 4956–04 specifically provides that the Y% values for fluorescent material equal ''the sum of the reflectance luminance factor [Y_r] and fluorescence luminance factor [Y_f].'' *See* § 7.4 and Table 14 of ASTM D 4956–04. In other words, $Y_r + Y_f = Y_t$. Because fluorescence is only present during the day, the Y_f component of the Y% value of fluorescent material is irrelevant to nighttime conspicuity. Accordingly, fluorescent yellow material with a minimum Y% value of 45 (above the maximum allowable for

[7] Type VI material is a unique material typically used for temporary roll-up warning signs, traffic cone collars and post bands, and would not be suitable for use on rail equipment; accordingly, even though the durability requirements of Type VI sheeting are identical to Type V's requirements, it is irrelevant for purposes of this rule. In addition, FRA notes that the new Type X sheeting's durability requirements are identical to Type V's requirements, but, at this time, FRA can make no recommendation as to its suitability for use on rail cars.

Type V material), may appear brighter than required by the final rule during the day but at night the fluorescent luminance (Y_f) will be virtually lost and the material will have the same reflectance luminance (Y_r) as an ordinary-colored (non-fluorescent) yellow material.

Because both materials (ordinary-colored yellow metalized materials and fluorescent yellow non-metalized material) would have the same nighttime effectiveness and would have to meet the same durability requirements of the ASTM specification, FRA does not believe that it is reasonable to exclude fluorescent yellow non-metalized material from the rule. Accordingly, the requirements of paragraph (c) of § 224.103 have been revised to allow the use of white, yellow, or fluorescent yellow, metalized or non-metalized retroreflective sheeting, that meets the durability requirements of Type V sheeting and the initial minimum coefficient of retroreflection values (i.e., initial minimum photometric performance requirements) specified in Table 1 of the final rule. Specifically, paragraph (c) has been revised to require that retroreflective sheeting ''meet the requirements of ASTM D 4956–04, for Type V Sheeting if metalized or Type VII Sheeting if non-metallized, except for the initial minimum values of the coefficient of retroreflection, and shall, as initially applied, meet the minimum values for the coefficient of retroreflection specified in Table 1 of the rule. FRA notes that 3M recommended requiring conformance to ASTM Type IV requirements for non-metalized material. FRA has chosen not to follow 3M's specific recommendation in this instance because Type IV material may not meet the initial minimum photometric performance requirements specified in the rule. *See* Table 9 of ASTM D 4956–04. FRA notes, however, because the ASTM D 4956–04 color and durability requirements for Type IV material are exactly the same as Type VII material, if a Type IV material meets the initial minimum coefficient of retroreflection values specified in the rule, its use would be acceptable.[8]

As explained in the NPRM and the preamble to the final rule, the construction, color, and performance standards set forth in this rule are designed to ensure that retroreflective material applied pursuant to this rule is durable enough to withstand the harsh railroad operating environment and maintain sufficient levels of reflectivity throughout the useful life of the material. FRA notes, however, that it is the responsibility of the retroreflective material manufacturer and the customer to determine the suitability of particular materials for use on freight rolling stock. FRA recognizes that many freight rolling stock owners already have extensive experience using various types of reflective materials on their equipment in specific service environments. FRA recognizes that these owners understand the harsh conditions associated with railroad operations that may affect the performance of the retroreflective material, particularly the power washing of equipment, the extensive exposure of the equipment to various harsh chemicals and thawing sheds. Accordingly, freight rolling stock owners are encouraged to exercise their knowledge based on past experience with particular products and the particular operating environment parameters when choosing a retroreflective material to apply to their equipment.

As noted in the NPRM and the preamble to the final rule, the responsibility for compliance with the construction, color, and performance requirements of the retroreflective sheeting used to comply with this rule rests upon the manufacturers of the sheeting. In accordance with § 224.103(d), the manufacturers who are providing retroreflective sheeting to the railroad industry must certify their products' compliance with § 224.103 by indelibly marking the material with the characters ''FRA–224'' constituting the manufacturer's certification that the retroreflective sheeting conforms to the construction, color, and performance requirements of the rule and meets or exceeds the requirements of the ASTM specification incorporated into the rule. Sheeting which does not contain the ''FRA–224'' mark as specified in § 224.103(d) does not comply with the rule, should not be sold to customers in the rail industry for purposes of compliance with this rule, and cannot be validly certified as compliant with the rule. In addition, if a manufacturer supplies retroreflective sheeting to a customer for the purpose of compliance with this rule, FRA expects that the material being supplied meets the color, construction, and performance requirements of this rule and that the particular type of material has been successfully tested in accordance with the ASTM standard incorporated into the rule. FRA also expects that a manufacturer of retroreflective sheeting would make available to customers all test verification data demonstrating that the sheeting complies with the rule and the ASTM specification incorporated into the rule. FRA encourages freight rolling stock owners to request such data from manufacturers when making the decision to purchase a particular type of retroreflective material.

Section 224.105 Sheeting dimensions and quantity

This section of the final rule described the general standards for the pattern of retroreflective material application for freight rolling stock, dimensions of individual pieces of retroreflective sheeting, and the minimum quantity of retroreflective sheeting required on each side of a freight car or locomotive. Specifically, this section of the final rule required that with certain exceptions, retroreflective sheeting applied pursuant to this part be 4 inches wide and 18 or 36 inches long. This section of the final rule also provided that retroreflective sheeting must be applied along the length of freight car and locomotive sides and that the amount of retroreflective sheeting required to be applied, is dependent on the length of the car or locomotive and the color of the sheeting. Table 2 of this section specified the minimum square footage of sheeting required on each car or locomotive side.

As explained in the preamble to the final rule, FRA chose to require relatively large-sized reflectors in order to minimize the degradation rate of individual strips of retroreflective sheeting. Requiring retroreflective sheeting of certain dimensions, along with a specific pattern of application as provided in § 224.106, also ensures that to the extent possible a uniform pattern of reflectorization will be present throughout the entire freight rolling stock fleet subject to this rule. The importance of achieving a relatively uniform pattern of reflectorization is discussed in detail in the preambles to both the NPRM and the final rule. *See* 68 FR 62948 and 70 FR 159.

Although in its petition AAR specifically recognizes FRA's rationale for establishing minimum dimensions for retroreflective sheeting strips, AAR asked FRA to reconsider § 224.105, expressing the view that ''there is no logic to establishing a maximum size'' for the strips and noting that several railroads would like to use continuous strips of retroreflective sheeting on locomotives. Accordingly, AAR recommended that this section be revised to require that retroreflective

[8] Consistent with the revised performance requirements of paragraph (c), paragraph (b) of this section which sets forth the color requirements, has been revised to allow for the use of fluorescent yellow retroreflective material, as well as ordinary-colored yellow material and white material.

sheeting be applied in strips ''no less than 4 inches wide and 18 inches long.''

Because FRA continues to believe that it is necessary to specify the dimensions of retroreflective sheeting to be applied in most instances under the rule, FRA has not adopted AAR's specific suggested revisions to § 224.105. Nonetheless, FRA does recognize that due to the physical configuration of various car types, application of 4x18 inch or 4x36 inch strips of retroreflective material may not always be the best pattern of application (e.g., if a car has an eight-inch wide side sill, it may make more sense to apply retroreflective material in eight inch wide strips, as opposed to two four-inch wide strips stacked horizontally above each other). Accordingly, FRA has revised § 224.105 to provide, in part, that ''[u]nless otherwise specified, retroreflective sheeting applied under this part shall be applied in strips 4 inches wide and 18 or 36 inches long, *as practicable*.'' (Emphasis added). With this revision, FRA intends that in most instances, retroreflective material will be applied to freight car sides in 4x18 inch or 4x36 inch strips; however, the phrase ''as practicable'' has been added to provide freight car owners and railroads with some amount of flexibility in the size of individual pieces of retroreflective sheeting applied to freight rolling stock. FRA encourages freight rolling stock owners and railroads who intend to apply retroreflective material to their equipment in sizes other than 4x18 inch or 4x36 inches to contact FRA's, Office of Safety, Motive, Power, and Equipment Division for advice on the material's application.

FRA continues to recognize, as noted in the NPRM and the preamble to the final rule, that the conspicuity issues surrounding locomotives differ from the issues surrounding freight cars. Accordingly, as discussed in the analysis of § 224.106 below, FRA has revised the retroreflective sheeting application requirements applicable to locomotives to make it clear that application of a continuous strip of retroreflective sheeting along the length of locomotive sides (as opposed to separate 4x18 inch or 4x36 inch strips of retroreflective sheeting) will meet the requirements of the rule.

At least one manufacturer of retroreflective material has expressed concern regarding certifying retroreflective material as compliant with this rule if that material is other than four inches wide (e.g., 8 inches wide). *See* document no. 136 in the docket of this proceeding. As discussed above in the analysis of § 224.103, in accordance with paragraph (d) of that section, manufacturers are required to certify their products' compliance with the construction, color, and performance requirements of the rule. Manufacturers are not required to certify compliance with the specific size standards of the rule.[9] In other words, a manufacturer could certify 8 inch wide retroreflective material as compliant with part 224, provided the material meets the requirements of §§ 224.103(a)–(c). FRA cautions, however, that paragraph (d) of § 224.103 also requires that the certification mark appear ''at least once on the exposed surface of each piece of sheeting in the final application.'' In other words, if retroreflective sheeting is other than four inches wide, the ''FRA–224'' certification mark must still appear at least once on that piece of sheeting as it is applied on the sides of freight rolling stock.

Section 224.106 Location of retroreflective sheeting

This section sets forth specific patterns for the application of retroreflective material to various types of freight cars, as well as locomotives. Specifically, paragraph (a) of this section provides that retroreflective sheeting must be located clear of appurtenances and devices such as ladders and other safety appliances or attachments that may obscure its visibility. Paragraph (a) also provides that retroreflective sheeting need not be applied over existing or required car stencils or markings, nor must the sheeting be applied to discontinuous surfaces such as bolts, rivets, door hinges, or other irregularly shaped areas that may prevent the sheeting from adhering to the car sides. TTX petitioned for reconsideration of this provision, noting that although the section provided that retroreflective sheeting ''need not be applied over existing or required car stencils and markings,'' § 224.106(a)(1)(i), (ii), (2), and (3) mandate that retroreflective strips be applied no more than 12 feet apart along the length of car sides. TTX then noted that ''in the event there are stencils, appurtenances, and discontinuous surfaces for a continuous space of 12 feet or more on the only available car side, it is not clear whether the car owner must move stencils to affix the reflectors or whether the presence of those obstructions vitiates the 12-foot requirement.'' FRA does not intend that a car owner or railroad would ever have to move existing stencils to accommodate the retroreflective material required under this part; such a requirement would not be cost-effective. Accordingly, FRA has revised paragraph (a) to make it clear that if it is not practicable to apply retroreflective material every 12 feet along the length of car sides ''because of existing stencils, appurtenances, or discontinuous surfaces, the sheeting shall be applied at the next smallest interval practicable.'' For example, if a car has a continuous space of 13 feet occupied by stencils, appurtenances, and/or other discontinuous surfaces, then FRA would expect retroreflective material to be applied on either side of such space, as close as practicable to 12 feet, without interfering with the occupied surfaces. Paragraphs (a)(1)(i), (a)(1)(ii), (2) and (3) have also been revised to be consistent with this revision to paragraph (a). Freight rolling stock owners with cars that are unable to meet the 12-foot spacing requirement are encouraged to request guidance on sheeting application from FRA's Office of Safety, Motive Power and Equipment Division.

To accommodate cars with limited unoccupied surface space suitable for attaching reflectors, paragraph (a) of this section of the final rule specifically provided that if necessary to avoid appurtenances, discontinuous surfaces, or existing or required car markings or stencils, 4x18 inch strips could be separated into two 4x9 inch strips and likewise 4x36 inch strips could be separated into four 4x9 inch strips. The 4x9 inch strips could then be applied on either side of the interfering appurtenance, discontinuous surface, or car making or stencil. Although FRA has not changed the substance of this provision of the final rule, FRA has revised the sixth sentence of the introductory text in paragraph (a) to provide that if it is ''necessary to avoid appurtenances, discontinuous surfaces or existing or required car markings or stencils, 4x18 or 4x36 inch strips of retroreflective material may be divided into 4x9 inch strips and applied on either side of the appurtenance, discontinuous surface, or car markings or stencils, as practicable.'' FRA believes that this revised wording is both consistent with the final rule and clearer than FRA's original wording.

Paragraph (a) also sets forth the specific pattern of application for railroad freight cars generally (e.g., box

[9] Paragraph (d) of § 224.103 provides, in part, that ''[t]he characters ''FRA–224'', constituting the manufacturer's certification that the retroreflective sheeting conforms to the requirements of paragraphs (a) through (c) of this section.'' Paragraph (a) contains the construction requirements; paragraph (b) contains the color requirements; and paragraph (c) contains the performance requirements.

cars, gondola cars, and other similarly configured cars), tank cars, flat cars, and ''cars of special construction''. As applied to freight cars, other than flat cars and tank cars, paragraph (a)(1) provides for either a vertical or horizontal pattern of retroreflective sheeting along the length of the car sides, with the bottom edge of the sheeting as close as practicable to 42 inches from the top of the rail, but not below the side sill. In its petition, AAR noted an inconsistency in paragraph (a)(1)(ii) of this section setting forth the general rule for horizontal placement of retroreflective sheeting on freight cars. Specifically, AAR pointed out that paragraph (a)(1)(ii) required at least two 4x18 inch strips to be placed ''one above the other'' at each car end. Figures 4, 5, and 6 depicting the horizontal placement pattern on a typical box car, covered hopper car, and gondola car, however, show the end strips next to each other, not above each other. Accordingly, AAR recommended that paragraph (a)(1)(ii) be revised to allow two 4x18 inch strips to be applied either one above the other or next to each other. FRA notes this was an inadvertent inconsistency in the final rule and FRA's intent was to allow the placement of one 4x36 inch strip, or two 4x18 inch strips either above each other, or next to each other, as close to each end of the car as practicable. Accordingly, paragraph (a)(1)(ii) has been revised to allow ''two 4x18 inch strips, one above or next to the other * * * as close to each end of the car as practicable.''

Paragraph (a)(2) addresses tank cars and provides two options for applying retroreflective sheeting to such cars. First, sheeting may be applied vertically along the car sides and centered on the horizontal centerline of the tank, or as near as practicable. Second, the final rule provided that if it was not practicable to safely apply the sheeting centered on the horizontal centerline of the tank, the sheeting could be applied vertically with its top edge ''no higher'' than the horizontal centerline of the tank. FRA notes, however, that this second option was worded inconsistently with FRA's intent as explained in the preamble to the final rule. Specifically, FRA intended that as an alternative to centering the sheeting on the horizontal centerline of the tank, the sheeting could be applied with its top edge ''no lower'' than the horizontal centerline of the tank. *See* 70 FR 161. Accordingly, paragraph (a)(2) of this section has been revised to correct this error.

Paragraph (a)(3) addresses flat cars (defined to include spine cars, articulated and multi-unit articulated cars) and provides for a horizontal pattern of retroreflective material along the length of flat cars' side sills, with the bottom edge of the sheeting no lower than the bottom of the side sill and the top edge of the sheeting no higher than the top of the car deck or floor. Both TTX and AAR petitioned for reconsideration of this requirement, noting that cars such as spine cars and skeleton log flat cars do not have side sills running the entire length of the cars. According to AAR and TTX, these cars have ''very short side sills at the ends of the car'' and the only part of the car between the end side sills to which retroreflective sheeting could be applied is the center sill. Accordingly, both TTX and AAR recommended that if a flat car does not have a continuous side sill, the rule should permit retroreflective sheeting to be applied to the center sill, provided that the sheeting is not obscured by other components. FRA agrees with the concerns of AAR and TTX regarding flat cars without continuous side sills, and accordingly, paragraph (a)(3) of the final rule has been revised to allow for placement of retroreflective sheeting to ''other surfaces inboard of the sides, such as the center sill,'' so long as the sheeting is not obscured by other parts of the car. For additional advice concerning the application of material to flat cars that do not have continuous side sills, freight rolling stock owners are encouraged to contact FRA's Office of Safety, Motive Power & Equipment Division for guidance.

Paragraph (b) of § 224.106 of the final rule addresses the reflectorization pattern of locomotives. As explained in the NPRM and the preamble to the final rule, FRA recognizes that the conspicuity issues surrounding locomotives differ from the issues surrounding freight cars. Accordingly, in the final rule FRA provided a more flexible approach to the reflectorization of locomotives, requiring only that retroreflective material be spaced as uniformly as practicable along the length of locomotive sides and applied as close as practicable to 42 inches above the top of the rail. As indicated in the discussion of § 224.105 above, AAR petitioned for reconsideration of this requirement, noting the desire of several railroads to use continuous strips of retroreflective material on locomotives, as opposed to individual strips of 4x18 or 4x36 inches of material. AAR also pointed out that in the preamble to the final rule, FRA contemplated the use of continuous striping on locomotives.[10] AAR is correct in this regard. In the final rule, FRA intended to allow the use of continuous retroreflective sheeting strips along the entire length of locomotive sides. Accordingly paragraph (b) has been revised to clarify this intent and now explicitly provides two alternatives for reflectorizing locomotives. Specifically, paragraph (b) requires that locomotives be equipped with the specified minimum amounts of retroreflective material on each side, as close as practicable to 42 inches from the top of the rail, ''either (1) in strips four inches wide and 18 or 36 inches long and spaced as uniformly as practicable along the length of the locomotive sides, or (2) in one continuous strip, at least four inches wide, along the length of the locomotive.''

Section 224.107 Implementation Schedule

This section of the final rule generally required that all freight cars subject to this part be equipped with retroreflective sheeting conforming to this part within approximately ten years of the effective date of the final rule (i.e., by May 31, 2015), and similarly that all locomotives subject to this part be equipped within approximately five years (i.e., by May 31, 2010). FRA has retained these general time frames, but the exact compliance dates have been revised consistent with the rule's effective date.

The final rule provided two options for the timing of applying the required retroreflective material to existing freight cars and locomotives not already equipped with reflective material. First, freight rolling stock owners could follow the ''default'' schedules of § 224.107(a)(2)(i) (for freight cars) or § 224.107(b)(2)(i) (for locomotives). The default schedule of paragraph (a)(2)(i) of the final rule required that retroreflective sheeting be applied to an existing non-reflectorized freight car, at the earliest of two events: (1) when the car is repainted or rebuilt, or (2) within nine months after the car first undergoes a single car air brake test (SCABT). This default schedule for reflectorizing freight cars was designed to allow car owners and railroads the ability to apply retroreflective material while a car is out of service for other maintenance or repair reasons, thereby eliminating the

[10] In the preamble to the final rule, FRA stated that ''most locomotives already reflectorized in the course of voluntary reflectorization programs are equipped with * * * reflective material applied along the length of the locomotive sides at platform height, exactly the pattern contemplated by this final rule.'' 70 FR 162.

need to take a car out of service for the specific purpose of applying retroreflective material.

The default schedule of paragraph (b)(2)(i) of the final rule required that retroreflective sheeting be applied to existing non-reflectorized locomotives no later than the first biennial (182 day) inspection performed pursuant to 49 CFR 229.29 occurring after the effective date of the final rule. Again, FRA intended this default schedule to prevent locomotives being taken out of service for the express purpose of applying retroreflective material and instead to allow for the application of retroreflective material while a locomotive is out of service for routine maintenance purposes. AAR petitioned for reconsideration of paragraph (b)(2)(i), noting that although locomotives are normally inspected indoors, cold weather may still prevent the application of retroreflective material during even an indoor inspection. For example, in its petition, AAR explained that in January 2005, the Canadian Pacific Railroad brought a locomotive indoors when the outside temperature was –7.6 °F. After one hour, the locomotive's temperature was 33.2 °F and after seven hours, the locomotive's temperature was 43 °F, below 3M's recommended 45 °F threshold for applying sheeting to rail cars referenced in the preamble to the final rule. *See* 70 FR 163. Although FRA notes that prior to publication of the final rule, 3M submitted information to the docket noting that due to ''recent technological developments'' the recommended minimum application temperature for certain types of retroreflective sheeting had decreased to 35 °F (see document 120 in the docket), FRA agrees with AAR's concern regarding tape application on cold surfaces and believes that it is reasonable to take weather conditions into account when applying retroreflective material, not only to freight cars, but to locomotives as well. Accordingly, consistent with the freight car provision of paragraph (a)(2)(i), paragraph (b)(2)(i) has been revised to require that retroreflective sheeting be applied to existing locomotives not equipped with conforming retroreflective sheeting ''not later than nine months after the first biennial inspection performed pursuant to 49 CFR 229.29'' occurring after the effective date of the rule.

As alternatives to the default schedules of paragraphs (a)(2)(i) and (b)(2)(i), paragraphs (a)(2)(ii) and (b)(2)(ii) of this section of the final rule provided a more flexible option of allowing freight rolling stock owners to effectively ''opt-out'' of the default schedules and implement their own schedule for reflectorization, provided certain milestones are met. Specifically, paragraphs (a)(2)(ii) and (b)(2)(ii) of this section of the final rule provided that a freight rolling stock owner may elect not to follow the default schedules of paragraphs (a)(2)(i) and (b)(2)(i) if, by July 1, 2005, the owner submitted to FRA an initial Reflectorization Implementation Compliance Report (Compliance Report).[11] As part of the Compliance Report, freight rolling stock owners must certify that all freight rolling stock subject to part 224 in their fleet will be equipped with the appropriate retroreflective sheeting in conformance with the schedules set forth in Table 3 of the rule (for freight cars) and Table 4 of the rule (for locomotives). Although FRA has retained the same general filing requirements and time periods for compliance as those in the final rule, FRA has revised the specific compliance dates to reflect the delay in beginning the implementation of the rule caused by the stay of effectiveness published on May 26, 2005. As noted in the preamble to the final rule (70 FR 164) in keeping with the requirements of the Paperwork Reduction Act and the Government Paperwork Elimination Act, FRA is providing freight rolling stock owners the option of submitting Compliance Reports to FRA electronically. Appendix C contains guidelines for submitting Compliance Reports to FRA, both electronically and in paper format. FRA intends to revise these guidelines as the system for electronic reporting under this rule is developed more fully. FRA notes, however, that if a freight rolling stock owner has already filed an initial Compliance Report with FRA prior to publication of these guidelines, there is no need for that owner to submit to FRA another initial Compliance Report.

FRA notes that to date it appears that there has been some confusion among freight rolling stock owners as to who is required to file Compliance Reports with FRA. First, in accordance with the final rule only freight rolling stock owners who elect to follow the implementation schedules of §§ 224.107(a)(2)(i) or (b)(2)(i) or who are seeking grandfathered status for existing freight rolling stock already equipped with certain types of reflective material under §§ 224.107(a)(3) or (b)(3) are required to file Compliance Reports. FRA also notes that by completing the certification section of the report (Part IV of FRA Form F6180.113) the freight rolling stock owner is affirmatively representing to the FRA that freight rolling stock in its fleet will be reflectorized in accordance with the alternative schedules of §§ 224.107(a)(2)(i) or (b)(2)(i). FRA encourages freight rolling stock owners who choose to file an initial Compliance Report with FRA, but who do not manage the maintenance or use of their fleet (because of lease arrangements or otherwise), to take efforts to ensure that the party the owner holds responsible for the maintenance or use of the equipment is properly adhering to the requirements of the alternative schedule.

Paragraph (b)(4) of this section in the final rule provided that certain small railroads could take an additional five years to bring their locomotive fleets into compliance with the rule. Specifically, paragraph (b)(4) provided that railroads with fewer than 400,000 annual employee work hours that do not share locomotive power with a railroad with 400,000 or more annual employee work hours may take up to ten years to bring their locomotive fleets into compliance with the rule. Because a railroad's level of annual employee work hours may change over time, FRA has revised this paragraph to make it clear that for purposes of this rule, a railroad's size will be determined based on its size as of December 31, 2004.

Section 224.109 Inspection, repair, and replacement

This section of the final rule sets forth the requirements for the periodic inspection and maintenance of retroreflective material on freight rolling stock. Paragraph (a) of § 224.109 of the final rule required that retroreflective sheeting on freight cars subject to this part be visually inspected for presence and condition whenever a car undergoes a single car air brake test (SCABT) required under 49 CFR 232.305. Similarly, paragraph (b) required that retroreflective sheeting on locomotives subject to this part be visually inspected for presence and condition whenever the locomotive undergoes an annual inspection required under 49 CFR 229.27. Both paragraphs (a) and (b) required that if, upon inspection, more than 20 percent of the amount of sheeting required on either side of a car or locomotive under § 224.105 is found to be ''damaged, obscured, or missing,'' that sheeting must be repaired or replaced. Specifically, paragraph (a) required the railroad or contractor performing the SCABT to inspect the car for presence and condition of the

[11] The form Reflectorization Implementation Compliance Report is contained in Appendix B to the final rule.

required retroreflective material. If the inspecting railroad or contractor determines that maintenance is necessary, the railroad or contractor is required to promptly notify the car owner of the missing, damaged, or obscured sheeting, and car owners are afforded nine months from the date they are notified of the defective condition of the material to properly repair or replace the material. Paragraph (b) required that ''damaged, obscured, or missing'' sheeting on locomotives be repaired or replaced at the time of inspection, or if conditions at the time of the inspection were such that adequate repairs cannot be made, the material could be repaired or replaced ''at the next forward location where conditions permit.'' AAR petitioned FRA for reconsideration of several aspects of this section.

First, AAR expressed the view that the 20% maintenance threshold for both freight cars and locomotives is ambiguous. AAR explained that § 224.109's provision requiring maintenance if ''more than 20 percent of the amount of sheeting required under § 224.105 on either side of a car is damaged, obscured, or missing'' does not account for the amount of sheeting put on a rail car in the first place. In other words, AAR noted that as written, § 224.109 could require the repair or replacement of sheeting even if the amount of sheeting in good condition on a rail car or locomotive were more than what is required by § 224.105. For example, AAR explained that ''a locomotive might have twice the amount of sheeting required by section 224.105. If 25 percent of the amount of sheeting required under section 224.105 became defective, the locomotive would still have sheeting in good condition amounting to 175 percent of what is required by section 224.105. Yet, subsection 224.109(b) arguably requires the repair or replacement of the defective sheeting.'' This result was not FRA's intent. As explained in the preamble to the final rule, FRA required approximately 30% more material on each side of most typically-sized freight rolling stock than research demonstrated was necessary to provide adequate reflectorization. *See* 70 FR 168. By requiring 30% more retroreflective material than necessary, if 20% or less of that amount of required material is damaged, obscured, or missing, the remaining reflective material could still provide sufficient reflectivity, even if further damage occurred before maintenance was performed on the material (assuming the material is relatively evenly spread the length of the rail car or locomotive sides). Accordingly, FRA agrees with AAR's concern and § 224.109 has been revised to require the repair or replacement of retroreflective material on both freight cars and locomotives, when at the time of inspection, ''less than 80 percent'' of the minimum amount of sheeting required by § 224.105 on each car or locomotive side is present, not damaged, and not obscured.

Second, AAR noted that the maintenance threshold in § 224.109 is based on the amount of sheeting required by § 224.105 (i.e., the minimum amount of retroreflective sheeting required on existing cars reflectorized pursuant to the rule), but the section does not address grandfathered equipment. As AAR noted in its petition, § 224.107 of the final rule—not § 224.105—addresses the amount of sheeting required for grandfathered equipment. Because FRA agrees with AAR's point that the maintenance threshold for grandfathered equipment needs to be clarified in the rule, FRA has revised § 224.109 to require the repair or replacement of retroreflective material on both freight cars and locomotives grandfathered under the rule when, at the time of inspection, ''less than 80%'' of the minimum amount of sheeting required by § 224.107 on each car or locomotive side is present, not damaged, and not obscured. owners

Next, AAR expressed the view that § 224.109's requirement that the inspecting railroad or contractor notify the ''car owner'' of damaged, obscured, or missing sheeting is ambiguous. In support of this view, AAR noted that § 224.5 defines ''freight rolling stock owner'' to potentially include many entities other than the actual owner of the freight rolling stock (e.g., lessee of freight rolling stock, person who manages the maintenance or use of the freight rolling stock on behalf of an owner or one or more lessors or lessees) and that the rule is unclear which entity the inspecting railroad or contractor should notify in the event the retroreflective material on a car requires maintenance. AAR noted that the entity conducting the inspection of a freight car would have ''no way of knowing, with certainty, all the entities that could be considered freight rolling stock owners'' and that ''there is no need to require the inspecting entity to notify multiple companies of the need for maintenance.'' As a solution to this ambiguity, citing the *Office Manual of the A.A.R. Interchange rules* (Rule 112.G.7 (Jan. 1, 2005 edition)), AAR noted that industry rules provide that the entity responsible for the reporting mark of a rail car is responsible for maintenance of that car. Accordingly, AAR recommended that § 224.109 be revised to require the inspecting railroad or contractor to report the need for reflector maintenance to the owner of a car's reporting mark as indicated in AAR's Universal Machine Language Equipment Register (UMLER). FRA agrees with AAR's suggested revision and accordingly § 224.109(a) has been revised to require the inspecting railroad or contractor to notify ''the entity responsible for the reporting mark, as indicated in the Universal Machine Language Equipment Register'' of the damaged, missing or obscured material.[12]

Finally, AAR expressed the view that requiring the repair or replacement of retroreflective sheeting on locomotives at the time of the annual inspection, or ''the next forward location where conditions permit,'' is ''inadequate'' because there is ''no assurance that the next forward location where 'conditions permit' would be equipped to maintain (or install) retroreflective sheeting.'' Accordingly, AAR expressed the view that railroads should be afforded the same nine-month window freight car owners have to repair or replace retroreflective sheeting needing maintenance. FRA agrees with AAR's concern and, accordingly, § 224.109(b) has been revised to provide a nine-month maintenance window for locomotives, similar to that for freight cars.

Section 224.111 Renewal

This section of the final rule requires that all retroreflective sheeting required under this part, regardless of its condition, be replaced with new conforming sheeting, no later than ten years after the date of initial installation. As explained in the NPRM and the preamble to the final rule, this 10-year renewal period is based on most manufacturers' stated useful life of retroreflective material. AAR petitioned for reconsideration of this section expressing the view that this section would require the removal of existing sheeting in order to replace it at the end of ten years. As stated elsewhere in the rule, FRA does not intend to require the removal of existing sheeting at the end of ten years, if that sheeting does not interfere with the application of new sheeting. *See* §§ 224.107(a) and (b). Accordingly, this section has been

[12] As noted in the discussion of § 224.5 above, FRA has also reviewed the final rule to include a definition of ''Universal Machine Language Equipment Register.''

revised to make it clear that at the time of replacement, it is not necessary to remove the old sheeting unless it interferes with the placement of the new sheeting, but at the end of a 10-year period, the old sheeting shall not be considered in calculating the amount of retroreflective material required under this part.

Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Prior to issuing the January 3, 2005 final rule, FRA prepared and placed in the docket a regulatory analysis addressing the economic impact of the final rule. The rule was evaluated in accordance with existing policies and procedures and was considered to be non-significant under both Executive Order 12866 and DOT policies and procedures. For a more detailed discussion see 70 FR 168. This response to the petitions for reconsideration of the final rule is likewise considered to be non-significant under both Executive Order 12866 and DOT policies and procedures. This regulatory action generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of final rules to assess their impact on small entities. Prior to issuing the January 3, 2005 final rule, FRA prepared and placed in the docket a regulatory flexibility analysis which assessed the small entity impact by the rule. FRA certified that the final rule is not expected to have a ''significant'' economic impact on a ''substantial'' number of small entities under the Regulatory Flexibility Act and Executive Order 13272. For a more detailed discussion, see 70 FR 169. This response to the petitions for reconsideration of the final rule generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule. Consequently, FRA certifies that this regulatory action is not expected to have a ''significant'' economic impact on a ''substantial'' number of small entities under the Regulatory Flexibility Act and Executive Order 13272.

C. Paperwork Reduction Act of 1995

This response to the petitions for reconsideration of the final rule does not change the information collection requirements contained in the original final rule.

D. Federalism Implications

Executive Order 13132, entitled ''Federalism,'' provides in part that, to the extent practicable, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. As stated in the preamble to the final rule, FRA believes that this final rule will not have federalism implications that impose substantial direct compliance costs on State and local governments, and that this action is in compliance with Executive Order 13132. *See* 70 FR 170. The amendments contained in this response to the petitions for reconsideration to the final rule generally clarify requirements currently contained in the rule or allow for greater flexibility in complying with the rule.

E. Environmental Impact

FRA has evaluated this action in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545; May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's procedures. 64 FR 28547, May 26, 1999. FRA has further considered this final rule in accordance with sections 4(c) and (e) of FRA's Procedures to determine if extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. After conducting this review, FRA has determined that extraordinary circumstances do not exist that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 or more (as adjusted for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with Executive Order 13211, and has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association or business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, and Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, effective November 28, 2005, the stay of effectiveness of 49 CFR part 224 is lifted and chapter II, subtitle B, of title 49, Code of Federal Regulations is revised to read as follows:

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

Subpart A—General

Sec.
224.1 Purpose and scope.
224.3 Applicability.
224.5 Definitions.
224.7 Waivers.
224.9 Responsibility for compliance.
224.11 Penalties.
224.13 Preemptive effect.
224.15 Special approval procedures.

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

224.101 General requirements.
224.103 Characteristics of retroreflective sheeting.
224.105 Sheeting dimensions and quantity.
224.106 Location of retroreflective sheeting.
224.107 Implementation schedule.
224.109 Inspection, repair, and replacement.
224.111 Renewal.
Appendix A to Part 224—Schedule of Civil Penalties
Appendix B to Part 224—Form Reflectorization Implementation Compliance Report
Appendix C to Part 224—Guidelines for Submitting Reflectorization Implementation Compliance Reports

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

Subpart A—General

§ 224.1 Purpose and scope.

(a) The purpose of this part is to reduce highway-rail grade crossing accidents and deaths, injuries, and property damage resulting from those accidents, by enhancing the conspicuity of rail freight rolling stock so as to increase its detectability by motor vehicle operators at night and under conditions of poor visibility.

(b) In order to achieve cost-effective mitigation of collision risk at highway-rail grade crossings, this part establishes the duties of freight rolling stock owners (including those who manage maintenance of freight rolling stock, supply freight rolling stock for transportation, or offer freight rolling stock in transportation) and railroads to progressively apply retroreflective material to freight rolling stock, and to periodically inspect and maintain that material. Freight rolling stock owners, however, are under no duty to install, clean or otherwise maintain, or repair reflective material except as specified in this part.

(c) This part establishes a schedule for the application of retroreflective material to rail freight rolling stock and prescribes standards for the application, inspection, and maintenance of retroreflective material to rail freight rolling stock for the purpose of enhancing its detectability at highway-rail grade crossings. This part does not restrict a freight rolling stock owner or railroad from applying retroreflective material to freight rolling stock for other purposes if not inconsistent with the recognizable pattern required by this part.

§ 224.3 Applicability.

This part applies to all railroad freight cars and locomotives that operate over a public or private highway-rail grade crossing and are used for revenue or work train service, except:

(a) Freight rolling stock that operates only on track inside an installation that is not part of the general railroad system of transportation;

(b) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(c) Locomotives and passenger cars used exclusively in passenger service; or

(d) Freight rolling stock that is subject to a reflectorization requirement promulgated by another Federal agency.

§ 224.5 Definitions.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Safety, Federal Railroad Administration, or the Associate Administrator's delegate.

Damaged means scratched, broken, chipped, peeled, or delaminated.

Flat car means a car having a flat floor or deck on the underframe with no sides, ends or roof (including spine cars, articulated and mult-unit intermodal cars).

Freight rolling stock means:

(1) Any locomotive subject to Part 229 of this chapter used to haul or switch freight cars (whether in revenue or work train service); and

(2) Any railroad freight car (whether used in revenue or work train service).

Freight rolling stock owner means any person who owns freight rolling stock, is a lessee of freight rolling stock, manages the maintenance or use of freight rolling stock on behalf of an owner or one or more lessors or lessees, or otherwise controls the maintenance or use of freight rolling stock.

Locomotive has the meaning assigned by § 229.5 of this chapter, but for purposes of this part applies only to a locomotive used in the transportation of freight or the operation of a work train.

Obscured means concealed or hidden (i.e., covered up, as where a layer of paint or dense chemical residue blocks all incoming light); this term does not refer to ordinary accumulations of dirt, grime, or ice resulting from the normal railroad operating environment.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track or facilities; any independent contractor providing goods or services to a railroad; and any employee of such an owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Railroad freight car has the meaning assigned by § 215.5 of this chapter.

Tank car means a rail car, the body of which consists of a tank for transporting liquids.

Universal Machine Language Equipment Register means the database containing information on rail equipment maintained by the Association of American Railroads.

Unqualified Retroreflective Sheeting means engineering grade sheeting, super engineering grade sheeting (enclosed lens) or high-intensity type sheeting (ASTM Type I, II, III, or IV Sheeting) as described in ASTM International Standard D–4956–04, ''Standard Specification for Retroreflective Sheeting for Traffic Control.''

Work train means a non-revenue service train used for the maintenance and upkeep service of the railroad.

§ 224.7 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

§ 224.9 Responsibility for compliance.

(a) Freight rolling stock owners, railroads, and (with respect to certification of material) manufacturers of retroreflective material, are primarily responsible for compliance with this part. However, any person that performs any function or task required by this part (including any employee, agent, or contractor of the aforementioned), must perform that function in accordance with this part.

(b) Any person performing any function or task required by this part shall be deemed to have consented to FRA inspection of the person's facilities and records to the extent necessary to determine whether the function or task is being performed in accordance with the requirements of this part.

§ 224.11 Penalties.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $550, but not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this part.

(b) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

§ 224.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this part preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, rule, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; that is not incompatible with a law, rule, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce.

§ 224.15 Special approval procedures.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under § 224.103(e).

(b) *Petitions.* (1) Each petition for special approval of an alternative standard shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(ii) The alternative proposed, in detail, to be substituted for the particular requirements of this part; and

(iii) Appropriate data and analysis establishing that the alternative will provide at least an equivalent level of safety and meet the requirements of § 224.103(e).

(2) Three copies of each petition for special approval of an alternative standard shall be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, Mail Stop 10, 1120 Vermont Ave., NW., Washington, DC 20590.

(c) *Notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraph (b) of this section.

(d) *Public comment.* FRA will provide a period of not less than 30 days from the date of publication of the notice in the **Federal Register** during which any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, and shall contain the assigned docket number which appears in the **Federal Register** for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its Web site at *http://dms.dot.gov.*

(3) In the event FRA determines that it requires additional information to appropriately consider the petition, FRA will conduct a hearing on the petition in accordance with the procedures provided in § 211.25 of this chapter.

(e) *Disposition of petitions.* (1) If FRA finds that the petition complies with the requirements of this section and that the proposed alternative standard is acceptable or changes are justified, or both, the petition will be granted, normally within 90 days of its receipt. The Associate Administrator may determine the applicability of other technical requirements of this part when rendering a decision on the petition. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(2) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed alternative standard is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of a petition, written notice is sent to the petitioner and other interested parties and a copy of the notice is placed in the electronic docket of the proceeding.

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

§ 224.101 General requirements.

All rail freight rolling stock subject to this part shall be equipped with retroreflective sheeting that conforms to the requirements of this part. Notwithstanding any other provision of this chapter, the application, inspection, and maintenance of that sheeting shall be conducted in accordance with this subpart or in accordance with an alternative standard providing at least an equivalent level of safety after special approval of FRA under § 224.15.

§ 224.103 Characteristics of retroreflective sheeting.

(a) *Construction.* Retroreflective sheeting applied pursuant to this part shall consist of a smooth, flat,

transparent exterior film with microprismatic retroreflective elements embedded in or suspended beneath the film so as to form a non-exposed retroreflective optical system.

(b) *Color.* Retroreflective sheeting applied pursuant to this part shall be yellow, fluorescent yellow, or white as specified by the chromaticity coordinates of ASTM International's Standard D 4956–04, ''Standard Specification for Retroreflective Sheeting for Traffic Control.'' The Director of the Federal Register approves the incorporation by reference of this standard in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or at *http://www.astm.org.* You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., NW., Suite 7000, 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.*

(c) *Performance.* Retroreflective sheeting applied pursuant to this part shall meet the requirements of ASTM D 4956–04, for Type V Sheeting if metalized or Type VII Sheeting if non-metalized, except for the initial minimum values of the coefficient of retroreflection, and shall, as initially applied, meet the minimum values for the coefficient of retroreflection specified in Table 1 of this subpart.

TABLE 1 OF SUBPART B.—MINIMUM COEFFICIENT OF RETROREFLECTION (R_A) (IN CANDELA/LUX/METER^2) REQUIREMENT FOR RETROREFLECTIVE SHEETING (MINIMUM PHOTOMETRIC PERFORMANCE REQUIREMENTS)

Entrance angle	Observation angle			
	0.2 Degree		0.5 Degree	
	Yellow or fluorescent yellow	White	Yellow or fluorescent yellow	White
−4°	400	600	100	160
30°	220	350	45	75

(d) *Certification.* The characters ''FRA–224'', constituting the manufacturer's certification that the retroreflective sheeting conforms to the requirements of paragraphs (a) through (c) of this section, shall appear at least once on the exposed surface of each piece of sheeting in the final application. The characters shall be a minimum of three millimeters high, and shall be permanently stamped, etched, molded, or printed within the product and each certification shall be spaced no more than four inches apart.

(e) *Alternative standards.* Upon petition by a freight rolling stock owner or railroad under § 224.15, the Associate Administrator may approve an alternative technology as providing equivalent safety. Any such petition shall provide data and analysis sufficient to establish that the technology will result in conspicuity and durability at least equal to sheeting described in paragraphs (a) through (c) applied in accordance with this part and will present a recognizable visual target that is suitably consistent with freight rolling stock equipped with retroreflective sheeting meeting the technical requirements of this part to provide the intended warning to motorists.

§ 224.105 Sheeting dimensions and quantity.

Retroreflective sheeting shall be applied along the length of each railroad freight car and locomotive side as described in § 224.106. Unless otherwise specified, retroreflective sheeting applied under this part shall be applied in strips 4 inches wide and 18 or 36 inches long, as practicable. The amount of retroreflective sheeting to be applied to each car or locomotive subject to this part is dependent on the length of the car or locomotive and the color of the sheeting. For purposes of this part, the length of a railroad freight car or locomotive is measured from endsill to endsill, exclusive of the coupler and draft gear. Each side of a railroad freight car subject to this part, including each unit of multi-unit cars, and each side of a locomotive subject to this part must be equipped with at least the minimum amount of retroreflective sheeting specified in Table 2 of this subpart.

TABLE 2 OF SUBPART B.—MINIMUM QUANTITY REQUIREMENT FOR RETROREFLECTIVE SHEETING ON FREIGHT ROLLING STOCK

Freight car or locomotive length	Minimum area of retroreflective sheeting required (per car/locomotive side)—yellow sheeting (ft^2)	Minimum area of retroreflective sheeting required (per car/locomotive side)—white sheeting (ft^2)
Less than 50 ft.	3.5	4.0
Over 50 ft. to 60 ft.	4.0	5.0
Over 60 ft. to 70 ft.	4.5	5.5
Over 70 ft. to 80 ft.	5.0	6.0
Over 80 ft. to 90 ft.	5.5	7.0
Over 90 ft. to 100 ft.[1]	6.0	7.5

[1] Freight cars or locomotives over 100 ft. in length must be equipped with an additional one-half a square foot of sheeting on each side for every additional 10 feet of length.

§ 224.106 Location of retroreflective sheeting.

(a) *Railroad freight cars.* The retroreflective sheeting shall be applied along the length of each railroad freight car side in the manner provided by a uniform industry standard accepted by the Associate Administrator that provides for distribution of material along the length of each car and as close as practicable to 42 inches above the top of rail. In the event such a standard is not proffered by industry or accepted by the Associate Administrator, the criteria set forth in this subpart shall apply. Retroreflective sheeting applied under this part must be located clear of appurtenances and devices such as ladders and other safety appliances, pipes, or other attachments that may obscure its visibility. Retroreflective sheeting need not be applied to discontinuous surfaces such as bolts, rivets, door hinges, or other irregularly shaped areas that may prevent the sheeting from adhering to the car sides. In addition, retroreflective sheeting need not be applied over existing or required car stencils and markings. If necessary to avoid appurtenances, discontinuous surfaces, or existing or required car markings or stencils, 4x18 and 4x36 inch strips of retroreflective material may be divided into 4x9 inch strips and applied on either side of the appurtenance, discontinuous surface, or car markings or stencils, as practicable. Unless otherwise specified, retroreflective sheeting shall be applied along the sides of freight rolling stock at intervals not to exceed every 12 feet, as practicable. If it is not practicable to apply retroreflective sheeting every 12 feet because of existing stencils, appurtenances, or discontinuous surfaces, the sheeting shall be applied at the next smallest interval practicable.

(1) *General rule.* On railroad freight cars other than flat cars and tank cars, retroreflective sheeting shall be applied in either a vertical or horizontal pattern along the length of the car sides, with the bottom edge of the sheeting as close as practicable to 42 inches above the top of rail. Retroreflective sheeting shall not be applied below the side sill.

(i) *Vertical application.* If retroreflective sheeting is applied in a vertical pattern, at least one 4x36 inch strip or two 4x18 inch strips, one above the other, shall be applied as close to each end of the car as practicable. Between these two vertical end strips, a minimum of one 4x18 inch strip shall be applied at least every 12 feet, as practicable. *See* Figures 1, 2 and 3.

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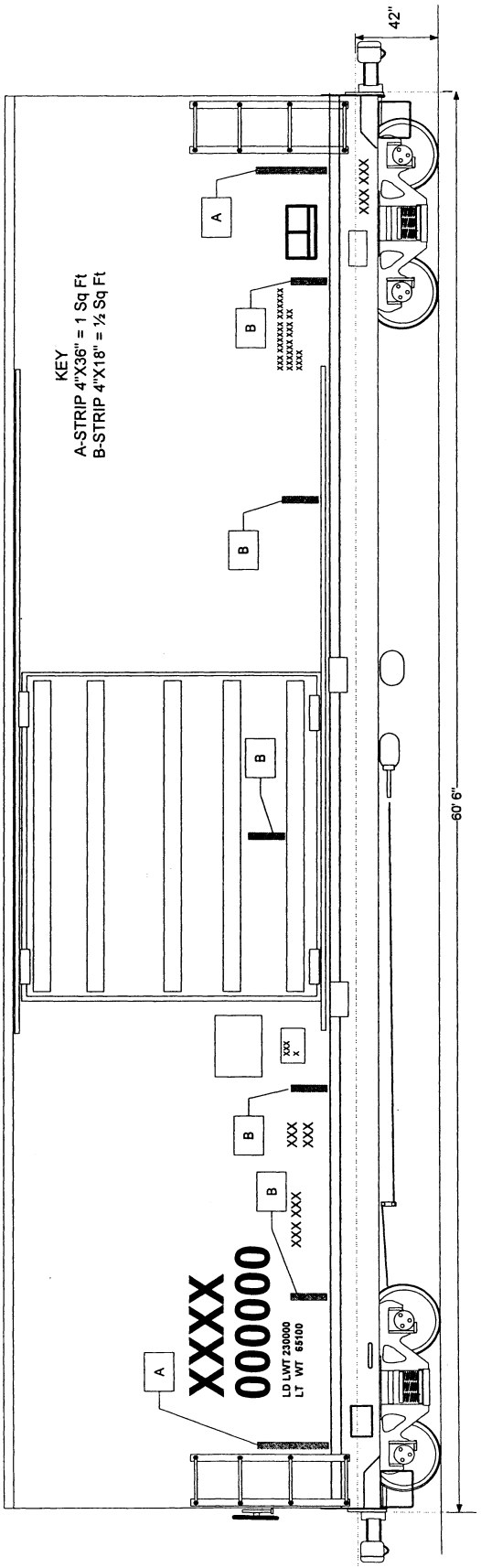

Figure 1
Yellow vertical reflective sheeting (4.5 sq. ft.) pattern applied to a typical 60' 6" Box Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

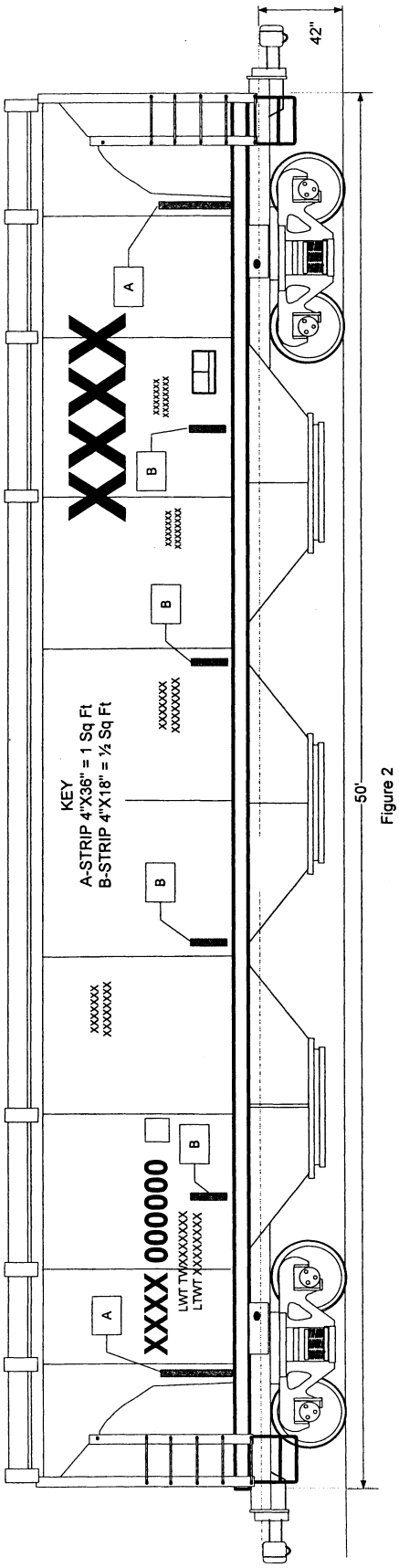

Figure 2
Yellow vertical reflective sheeting (4.0 sq. ft.) pattern applied to a typical 50 feet Covered Hopper Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

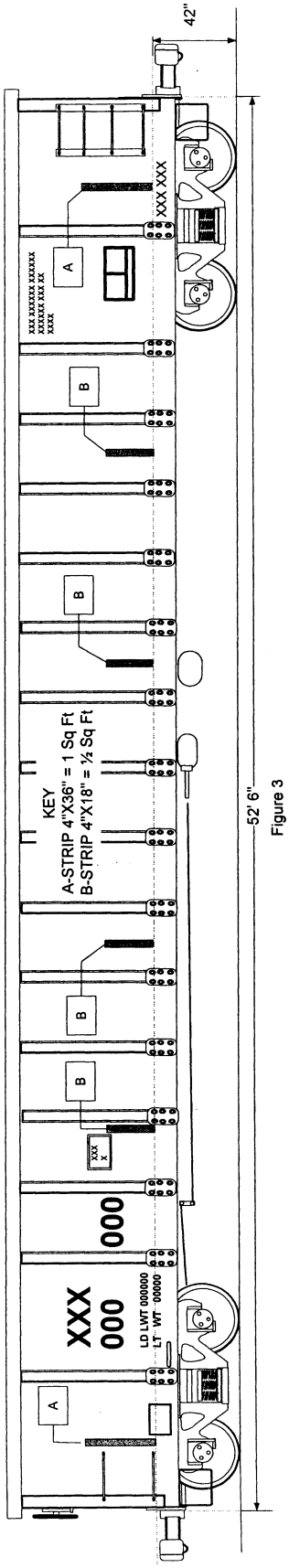

Figure 3
Yellow vertical reflective sheeting (4.0 sq. ft.) pattern applied to a typical 52' 6" Gondola Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow

(ii) *Horizontal application.* If retroreflective sheeting is applied in a horizontal pattern, at least one 4x36 inch strip, or two 4x18 inch strips, one above or next to the other, shall be applied as close to each end of the car

as practicable. Between these end strips, a minimum of one 4x18 inch strip shall be applied at least every 12 feet, as practicable. *See* Figures 4, 5, and 6.

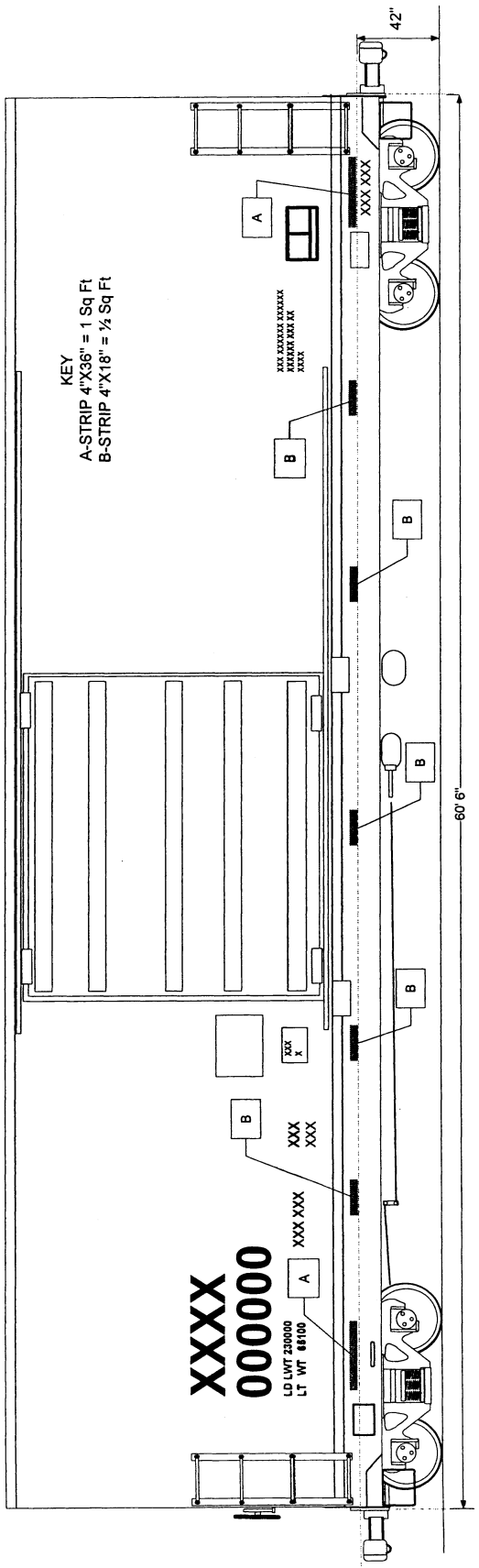

Figure 4
Alternate Pattern
Yellow horizontal reflective sheeting (4.5 sq. ft.) pattern applied to a typical 60' 6" Box Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

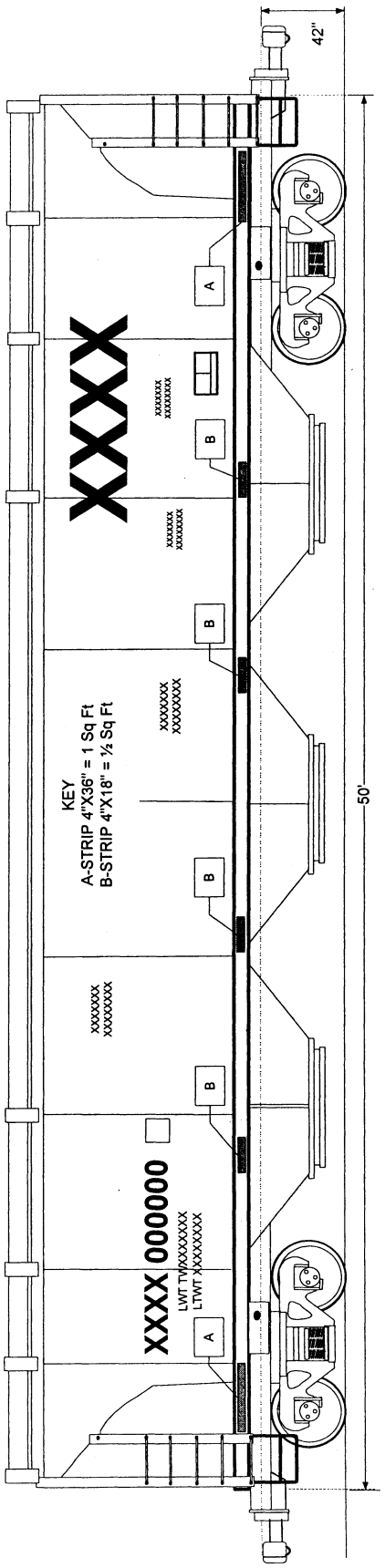

Figure 5
Alternate Pattern
Yellow horizontal reflective sheeting (4.0 sq. ft.) pattern applied to a typical 50 feet Covered Hopper Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

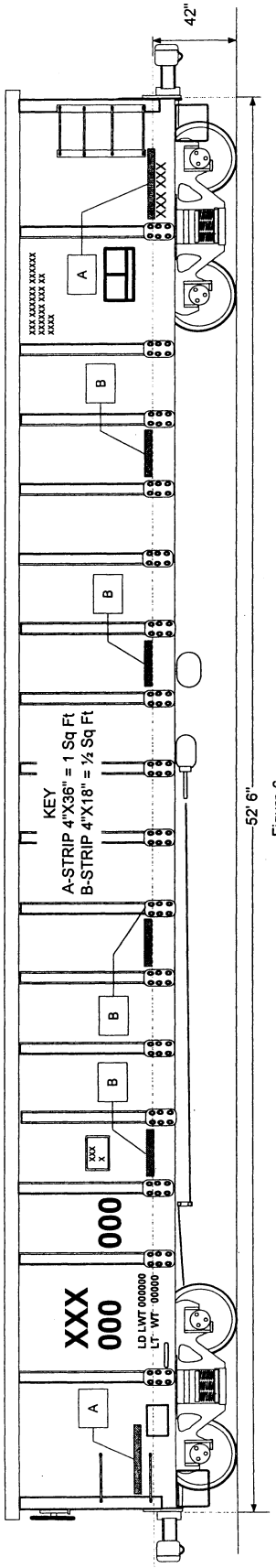

Figure 6
Alternate Pattern
Yellow horizontal reflective sheeting (4.0 sq. ft.) pattern applied to a typical 52' 6" Gondola Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

(2) *Tank cars.* On tank cars, retroreflective sheeting shall be applied vertically to each car side and centered on the horizontal centerline of the tank, or as near as practicable. If it is not practicable to safely apply the sheeting

centered vertically about the horizontal centerline of the tank, the sheeting may be applied vertically with its top edge no lower than the horizontal centerline of the tank. A minimum of either one 4x36 inch strip or two 4x18 inch strips, one above the other, shall be applied as close to each end of the car as practicable. Between these two end strips, a minimum of one 4x18 inch strip shall be applied at least every 12 feet, as practicable. Retroreflective sheeting applied under this part shall not be located in the spillage area directly beneath the manway used to load and unload the tank. *See* Figures 7 and 8.

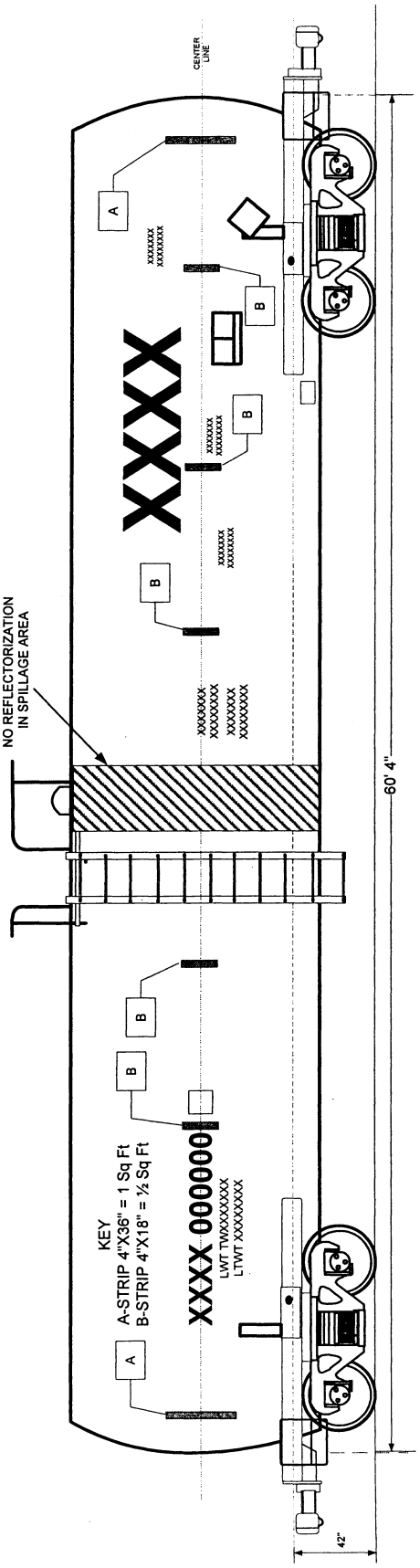

Figure 7
Yellow vertical reflective sheeting (4.5 sq. ft.) pattern applied to a typical Tank Car between 60' and 70' (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

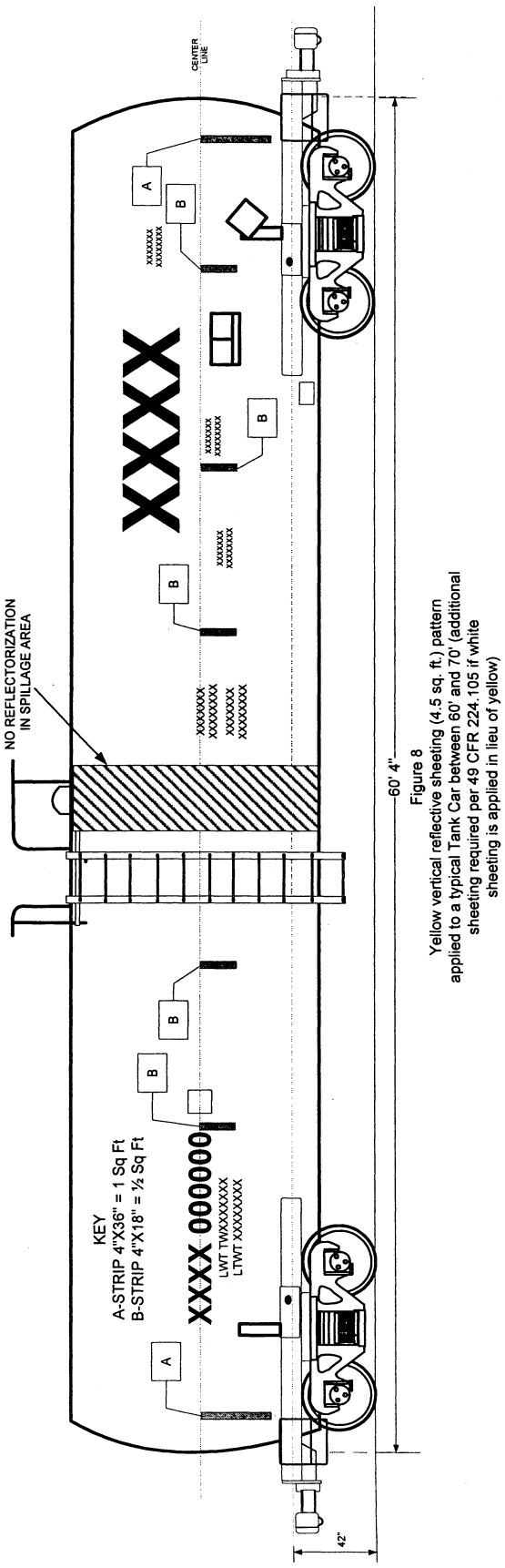

Figure 8
Yellow vertical reflective sheeting (4.5 sq. ft.) pattern applied to a typical Tank Car between 60' and 70' (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

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(3) *Flat cars.* On flat cars, retroreflective sheeting shall be applied in a horizontal pattern along the length of the side sill with the bottom edge of

the sheeting no lower than the bottom of the side sill and the top edge of the sheeting no higher than the top of the car deck or floor. At least two 4x18 inch strips, one above the other, shall be applied as close to each end of the car as practicable. If the side sill is less than 8 inches wide, one 4x36 inch strip, or two 4x18 inch strips may be applied one next to the other, dividing the strips into nine inch segments as necessary in accordance with paragraph (a) of this section. Between the two end strips, a minimum of one 4x18 inch strip shall be applied at least every 12 feet, as practicable. *See* Figure 9. If a car has a separate rack structure, retroreflective sheeting may be applied to the flat car portion only in accordance with the requirements of this section. For cars without continuous side sills, retroreflective sheeting may be applied to other surfaces inboard of the sides, such as the center sill, provided that the sheeting is not obscured by other components.

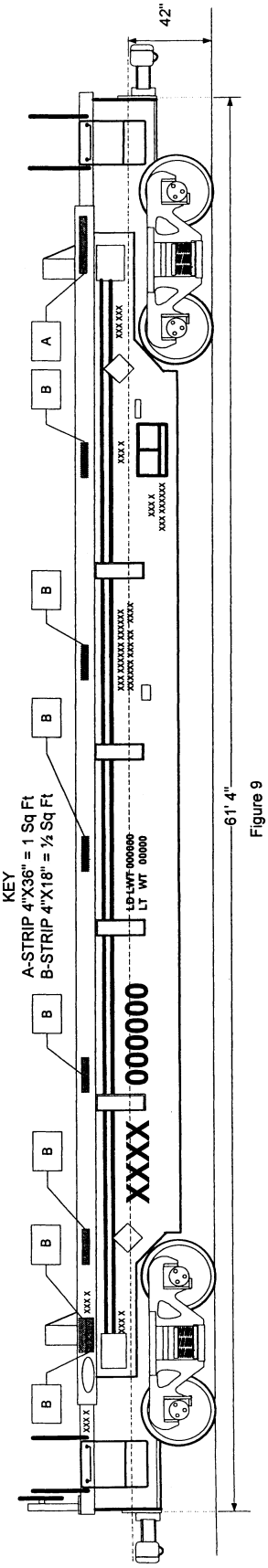

Figure 9
Yellow horizontal reflective sheeting (4.5 sq. ft.) pattern applied to a typical Flat Car (additional sheeting required per 49 CFR 224.105 if white sheeting is applied in lieu of yellow)

(4) *Cars of special construction.* This paragraph applies to any car the design of which is not compatible with the patterns of application otherwise provided in this section. Retroreflective sheeting shall conform as closely as

practicable to the requirements of paragraphs (a)(1) through (a)(3) of this section and shall have the minimum amount of sheeting described in § 224.105 distributed along the length of each car side.

(b) *Locomotives.* Locomotives subject to this part shall be equipped with at least the minimum amounts of retroreflective sheeting required by § 224.105 either in strips four inches wide and 18 or 36 inches long and spaced as uniformly as practicable along the length of the locomotive sides, or in one continuous strip, at least four inches wide, along the length of the locomotive. Retroreflective sheeting applied to locomotive sides shall be applied as close as practicable to 42 inches from the top of the rail.

§ 224.107 Implementation schedule.

(a) *Railroad freight cars.* All railroad freight cars subject to this part must be equipped with retroreflective sheeting conforming to this part by November 28, 2015. If a car already has reflective material applied that does not meet the standards of this part, it is not necessary to remove the material unless its placement interferes with the placement of the sheeting required by this part.

(1) *New cars.* Retroreflective sheeting conforming to this part must be applied to all cars constructed after January 26, 2006, before the cars are placed in service.

(2) *Existing cars without retroreflective sheeting.* (i) If, as of October 28, 2005, a car subject to this part is not equipped on each side with at least one square foot of retroreflective sheeting as specified in paragraph (a)(3) of this section, retroreflective sheeting conforming to this part must be applied to the car at the earliest of the following two occasions occurring after November 28, 2005 or in accordance with paragraph (a)(2)(ii) of this section:

(A) When the car is repainted or rebuilt; or

(B) Within nine months (270 calendar days) after the car first undergoes a single car air brake test as prescribed by 49 CFR 232.305.

(ii) A freight rolling stock owner may elect not to follow the schedule in paragraph (a)(2)(i) of this section if, not later than January 26, 2006 the freight rolling stock owner submits to FRA a completed Reflectorization Implementation Compliance Report certifying that the cars in the owner's fleet subject to this part will be equipped with retroreflective sheeting as required by this part in accordance with the schedule specified in Table 3 of this section. *See* Appendix B of this part for Reflectorization Implementation Compliance Report form.

TABLE 3 OF SUBPART B.—ALTERNATIVE SCHEDULE FOR APPLICATION OF RETROREFLECTIVE MATERIAL TO FREIGHT CARS PER § 224.107(A)(2)(II)

(A) [1]	(B) (percent)
November 28, 2007	20
November 28, 2008	30
November 28, 2009	40
November 28, 2010	50
November 28, 2011	60
November 28, 2012	70
November 28, 2013	80
November 28, 2014	90
November 28, 2015	100

[1] Column (A) indicates the date by which the minimum percentage of an owner's freight cars specified in column (B) must be equipped with retroreflective sheeting conforming to this part.

Thereafter,

(A) The designated fleet shall be equipped with retroreflective sheeting according to the schedule specified in Table 3 of this section;

(B) No later than January 28, 2008, the freight rolling stock owner shall submit to FRA an updated Reflectorization Implementation Compliance Report showing which cars of the fleet subject to this part were equipped with retroreflective sheeting as required by this part during the initial 24-month implementation period. Thereafter, updated Reflectorization Implementation Compliance Reports shall be submitted annually, no later than December 31 of each year for the duration of the 10-year implementation period. *See* Appendix B of this part.

(C) If, following the conclusion of the initial 24-month period or any 12-month period thereafter, the percentage requirements of this section have not been met—

(*1*) The freight rolling stock owner shall be considered in violation of this part;

(*2*) The freight rolling stock owner shall, within 60 days after the close of the period, report the failure to the Associate Administrator;

(*3*) The requirements of paragraph (a)(2)(i) shall apply to all railroad freight cars subject to this part in the freight rolling stock owner's fleet; and

(*4*) The fleet owner shall take such additional action as may be necessary to achieve future compliance.

(D) Cars to be retired shall be included in the fleet total until they are retired.

(3) *Existing cars with retroreflective sheeting.* If as of October 28, 2005, a car is equipped on each side with at least one square foot of retroreflective sheeting, uniformly distributed over the length of each side, that car shall be considered in compliance with this part through November 28, 2015, provided the sheeting is not unqualified retroreflective sheeting, and provided the freight rolling stock owner files a completed Reflectorization Implementation Compliance Report with FRA no later than January 26, 2006 identifying the cars already so equipped. *See* Appendix B of this part for Reflectorization Implementation Compliance form.

(b) *Locomotives.* Except as provided in paragraph (b)(4) of this section, all locomotives subject to this part must be equipped with conforming retroreflective sheeting by November 28, 2010. If a locomotive already has reflective material applied that does not meet the standards of this part, it is not necessary to remove the material unless its placement interferes with the placement of the sheeting required by this part.

(1) *New locomotives.* Retroreflective sheeting conforming to this part must be applied to all locomotives constructed after January 26, 2006, before they are placed in service.

(2) *Existing locomotives without retroreflective sheeting.*

(i) If as of October 28, 2005 a locomotive subject to this part is not equipped with the minimum amount of retroreflective sheeting specified in paragraph (b)(3) of this section, retroreflective sheeting conforming to this part must be applied to the locomotive not later than nine months after the first biennial inspection performed pursuant to 49 CFR 229.29 occurring after November 28, 2005.

(ii) A freight rolling stock owner may elect not to follow the schedule in paragraph (b)(2)(i) of this section, if not later than January 26, 2006, the freight rolling stock owner submits to FRA a Reflectorization Implementation Compliance Report certifying that the locomotives in the owner's fleet subject to this part will be equipped with retroreflective sheeting as required by this part in accordance with the schedule specified in Table 4 of this section. *See* Appendix B of this part.

TABLE 4 OF SUBPART B.—ALTERNATIVE SCHEDULE FOR APPLICATION OF RETROREFLECTIVE MATERIAL TO LOCOMOTIVES PER § 224.107(B)(2)(II)

(A) [1]	(B) (percent)
November 28, 2007	40
November 28, 2008	60
November 28, 2009	80
November 28, 2010	100

[1] Column (A) indicates the date by which the minimum percentage of an owner's locomotives specified in column (B) must be equipped with retroreflective sheeting conforming to this part.

Thereafter,

(A) The designated locomotive fleet shall be equipped with retroreflective sheeting according to the requirements of this paragraph (b)(2)(ii);

(B) No later than January 28, 2008, the freight rolling stock owner shall submit to FRA an updated Reflectorization Implementation Compliance Report showing which locomotives of the fleet subject to this part were equipped with retroreflective sheeting as required by this part during the initial 24 month implementation period. Updated Reflectorization Implementation Compliance Reports shall be submitted annually, no later than December 31 of each year, for the duration of the 5-year implementation period. *See* Appendix B of this part.

(C) If, following the conclusion of the initial 24-month period or any 12-month period thereafter, the percentage requirements of this section have not been met—

(*1*) The freight rolling stock owner shall be considered in violation of this part;

(*2*) The freight rolling stock owner shall, within 60 days after the close of the period, report the failure to the Associate Administrator;

(*3*) The requirements of paragraph (b)(2)(i) shall apply to all locomotives subject to this part in the freight rolling stock owner's fleet; and

(*4*) The fleet owner shall take such additional action as may be necessary to achieve future compliance.

(D) Locomotives to be retired shall be included in the fleet total until they are retired.

(3) *Existing locomotives with retroreflective sheeting.* If as of October 28, 2005, a locomotive is equipped on each side with at least one square foot of retroreflective sheeting, that locomotive shall be considered in compliance with this part for through November 28, 2015, provided the existing material is not unqualified retroreflective sheeting, and provided the freight rolling stock owner files a Reflectorization Implementation Compliance Report with FRA no later than January 26, 2006, identifying the cars already so equipped. *See* Appendix B of this part. If, as of October 28, 2005, a locomotive is equipped with unqualified retroreflective sheeting, the locomotive will be considered in compliance with this part through November 28, 2015, provided the locomotive is equipped with a minimum of 3 square feet of retroreflective material on each side and provided the freight rolling stock owner files a Reflectorization Implementation Compliance Report with FRA no later than January 26, 2006, identifying the locomotives already so equipped. *See* Appendix B of this part.

(4) Each railroad that has fewer than 400,000 annual employee work hours as of the end of calendar year 2004, and does not share locomotive power with another railroad with 400,000 or more annual employee work hours, may bring its locomotive fleet into compliance according to the following schedule: fifty percent of the railroad's locomotives must be retrofitted pursuant to § 224.106(b) by October 28, 2010, and one hundred percent must be retrofitted pursuant to § 224.106(b) by October 28, 2015. If a railroad with fewer than 400,000 annual employee work hours shares locomotive power with a railroad with 400,000 or more annual employee work hours, the smaller railroad must comply with the requirements of paragraphs (b)(2) and (3) of this section.

§ 224.109 Inspection, repair, and replacement.

(a) *Railroad freight cars.* Retroreflective sheeting on railroad freight cars subject to this part must be visually inspected for presence and condition whenever a car undergoes a single car air brake test required under 49 CFR 232.305. If at the time of inspection less than 80 percent of the amount of sheeting required under § 224.105 (§ 224.107 in the case of freight cars subject to § 224.107(a)(3)) on either side of a car is present, not damaged, and not obscured, the inspecting railroad or contractor shall promptly notify the person responsible for the reporting mark, as indicated in the Universal Machine Language Equipment Register, of the damaged, obscured, or missing sheeting (unless the inspecting railroad or contractor is the person responsible for the reporting mark). The inspecting railroad or contractor shall retain a written or electronic copy of each such notification made for at least two years from the date of the notice and shall make these records available for inspection and copying by the FRA upon request. Any person notified of a defect under this section shall have nine months (270 calendar days) from the date of notification to repair or replace the damaged, obscured, or missing sheeting. Where the inspecting railroad or contractor is the person responsible for the reporting mark, the person shall have nine months (270 calendar days) from the date of the inspection to repair or replace the damaged, obscured, or missing sheeting.

(b) *Locomotives.* Retroreflective sheeting must be visually inspected for presence and condition when the locomotive receives the annual inspection required under 49 CFR 229.27. If at the time of inspection less than 80 percent of the amount of sheeting required under § 224.105 (§ 224.107 in the case of locomotives subject to § 224.107(b)(3)) on either side of a locomotive is present, not damaged, and not obscured, the damaged, obscured, or missing sheeting must be repaired or replaced within nine months (270 calendar days) from the date of inspection, provided a record of the defect is maintained in the locomotive cab or in a secure and accessible electronic database to which FRA is provided access on request.

§ 224.111 Renewal.

Regardless of condition, retroreflective sheeting required under this part must be replaced with new sheeting no later than ten years after the date of initial installation. At the time of replacement, it is not necessary to remove the old sheeting unless it interferes with the placement of the new sheeting, but the old sheeting shall not be considered in calculating the amount of retroreflective material required under this part. For purposes of this section, November 28, 2005, shall be considered the initial date of installation for freight cars and locomotives covered by § 224.107(a)(3) or 224.107(b)(3). [1]

Appendix A to Part 224—Schedule of Civil Penalties

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. *See* 49 CFR Part 209, Appendix A.

Section	Violation	Willful violation
§ 224.103 Characteristics of retroreflective sheeting:		
(a)–(d) Retroreflective sheeting applied does not meet the requirements of § 224.103	$2,500	$5,000
§ 224.105 Sheeting dimensions and quantity:		
Failure to apply minimum amount of retroreflective sheeting in accordance with Table 2	2,500	5,000
Applying retroreflective sheeting of wrong dimensions	2,500	5,000
§ 224.106 Location of retroreflective sheeting:		
(a), (b)Applying retroreflective sheeting in nonconforming pattern	2,000	4,000
§ 224.107 Implementation schedule:		
(a)(1), (b)(1) Failure to apply retroreflective sheeting to new freight car or locomotive before equipment placed in service	5,000	7,500
(a)(2), (b)(2), (b)(4) Failure to apply retroreflective sheeting to existing freight car or locomotive in accordance with minimum schedule of paragraphs (a)(2), (b)(2), or (b)(4)	5,000	7,500
§ 224.109 Inspection, repair, and replacement:		
(a) Failure to perform inspection	5,000	7,500
Failure to properly notify car owner of defect	2,500	5,000
Failure to retain written notification of defect for two years	1,500	2,500
Failure to repair defect after notification	5,000	7,500
(b) Failure to perform inspection	5,000	7,500
Failure to repair defect	5,000	7,500

Appendix B to Part 224—Reflectorization Implementation Compliance Report

BILLING CODE 4910–06–P

OMB No. 2130-0566

REFLECTORIZATION IMPLEMENTATION COMPLIANCE REPORT

Instructions for completing form:

If submitting this form to FRA as an initial Reflectorization Implementation Compliance Report in accordance with 49 CFR 224.107(a)(2)(ii) and/or (b)(2)(ii), complete Parts I, II, III and IV. If submitting this form in accordance with 49 CFR 224.107(a)(3) and/or (b)(3), complete Parts I, II, III, IV, and V.

If this form is being submitted to FRA as an updated Reflectorization Implementation Compliance Report required by 49 CFR 224.107(a)(2)(ii)(B) or (b)(2)(ii)(B), complete Parts I, II, III, and V. In Part V, report the car/locomotive number(s) identifying each freight car and locomotive equipped with retroreflective sheeting conforming to 49 CFR Part 224 during this reporting period

Part I: Identification
Railroad or Car Owner:
Railroad or Car Owner Reporting Code:

Preparer Information:	
Name:	Title:
Address:	Phone:
	Fax:
	Email:

Part II: Type of Submission
☐ Initial Submission
☐ Updated Compliance Report

Part III: Identification of freight rolling stock fleet subject to 49 CFR Part 224
A. How many freight cars in your fleet are subject to 49 CFR part 224? _____
B. How many locomotives in your fleet are subject to 49 CFR part 224? _____

Part IV: Certification (Complete only if Part II: Type of Submission is Initial Submission)	
By filing this Reflectorization Implementation Compliance Report and any accompanying documents or electronic files with FRA, the undersigned Freight Rolling Stock Owner is electing to follow the alternative schedules for equipping its freight rolling stock with reflective material as set forth in 49 CFR §§224.107(a)(2)(ii) and/or (b)(2)(ii). By completing, executing, and filing this Compliance Report with FRA, the undersigned Freight Rolling Stock Owner is certifying that its entire fleet of freight rolling stock subject to 49 CFR Part 224 (Part 224) will be equipped with retroreflective sheeting conforming to the requirements of Part 224 in accordance with the schedules set forth in 49 CFR §224.107(a)(2)(ii) and/or (b)(2)(ii). Failure to meet the minimum requirements of Part 224 may result in the assessment of civil penalties or other enforcement action by FRA.	
Signature of Corporate Officer/Car owner:	Date:
Name:	
Title:	

Form FRA F6180.113 11/03

OMB No. 2130-0566

Part V: Identification of rail freight rolling stock conforming to 49 CFR Part 224

Reapplied[a]	Type (check one): Locomotive	Type (check one): Freight Car	Identification Number:	Reapplied[a]	Type (check one): Locomotive	Type (check one): Freight Car	Identification Number:
☐	☐	☐		☐	☐	☐	

Appendix C to Part 224—Guidelines for Electronic Submission of Reflectorization Implementation Compliance Reports

Appendix C

Guidelines for Submitting Reflectorization Implementation Compliance Reports 49 C.F.R. Part 224

The guidelines below are intended to provide freight rolling stock owners specific guidance and directions for the submission of "Reflectorization Implementation Compliance Reports" (Form FRA F 6180.113) when required by 49 CFR Part 224. A freight rolling stock owner may also contact the FRA's Office of Safety, Motive, Power, & Equipment Division, for further guidance on the submission of such reports.

Who must file a Reflectorization Implementation Compliance Report with FRA?

(1) A freight rolling stock owner (as defined at 49 CFR § 224.5) electing to follow the implementation schedule of 49 CFR §§ 224.107(a)(2)(ii) or (b)(2)(ii); or
(2) A freight rolling stock owner seeking to have existing freight rolling stock grandfathered pursuant to 49 CFR §§ 224.107(a)(3) or (b)(3).

What are the deadlines for submission of Reflectorization Implementation Compliance Reports?

In order to take advantage of the flexible implementation schedules provided in 49 CFR § 224.107(a)(2)(ii) or (b)(2)(ii) or to have freight rolling stock grandfathered pursuant to 49 CFR §§ 224.107(a)(3) or (b)(3), a freight rolling stock owner must submit initial and updated Compliance Reports with the Federal Railroad Administration (FRA) as follows:

(1) An initial Compliance Report no later [INSERT DATE 90 DAYS AFTER PUBLICATION DATE OF FINAL RULE],
(2) An updated Compliance Report no later than [INSERT DATE 26 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], and
(3) An updated Compliance Report no later than December 31 of each year for the duration of the implementation period.

See 49 CFR §§ 224.107(a)(2)(ii), (a)(3), (b)(2)(ii), (b)(3).

How do I submit a Compliance Report to FRA?

A Compliance Report may be submitted electronically or by filing a paper copy of completed Form FRA F6180.113 (found in Appendix B to 49 CFR Part 224) by following the directions below. If the electronic media or paper copy does not meet the requirements of 49 CFR Part 224, the entire submission will be returned.

(1) Paper Submission: Complete Parts I, II, III, IV and/or V of Form FRA F 6180.113 as instructed on the Form and send the completed Form to the following address:

Creative Information Technology, Incorporated (CITI)
4601 North Fairfax Drive
Suite 1100
Arlington, VA 22203
703-548-3313 Extension 223
POC: Angelica Mamani

Appendix C

Guidelines for Submitting Reflectorization Implementation Compliance Reports 49 C.F.R. Part 224

(2) Electronic Submission:

(a) Acceptable Disc Media: CD-R storage media only with 700 MB possible range, 1x-48x speed compatible, 4 ½" diameter (Note: CD-RW storage media cannot be accepted)

(b) Specific Directions:

(i) Complete Parts I, II, III, and IV on Form F 6180.113 as instructed on the Form and scan the completed Form FRA F6180.113 onto the disk media into either an Adobe Acrobat format or .jpg format (Note: Forms submitted on CD-RW storage media cannot be accepted and will not be returned); and

(ii) Following the format below, enter the information required by Part V of Form FRA F6180.113 into a spreadsheet in any one of the following formats: MS Excel, Quattro Pro, RTF, or CVS and save that spreadsheet onto the same CD-R disk media as (i) above.

Spreadsheet Format:

Columns on the spreadsheet	Field Name	Size of the Field	Content/Description
A	Car Owner Reporting Code	4 Character	1. The Car Owner Reporting Code found in **Part I** (*Identification)* of the OMB F6180.113. 2. Enter this code in Column A of the spreadsheet. 3. Enter all Capital Letters
B	Identification Number	6 Numbers	1. This is the identification number on **Part V**, (*Identification of rail freight rolling stock confirming to 49 CFR Part 224*). 2. This is the numeric unit identification (use leading zeros) 3. Enter this number in Column B of the spreadsheet.
C	Reapplied	1 Character	1. Has this equipment been reported? 2. Enter 'R' (*replacing the check mark required on the form*), if the car/locomotive was reported in Part V of a previous Reflectorization Implementation Compliance Report. 3. Enter 'I', if the car/locomotive has not been reported previously. 4. Entry must be a capital letter 5. Enter this information in Column C of the spreadsheet.
D	Type	1 character	1. Is this a car/locomotive? 2. Enter 'C' (*replacing the check mark required on the form*), if a rail freight rolling stock car. 3. Enter 'L' (*replacing the check mark required on the form*), if a locomotive. 4. Entry must be a capital letter. 5. Enter this information in Column D of the spreadsheet.

Appendix C

Guidelines for Submitting Reflectorization Implementation Compliance Reports 49 C.F.R. Part 224

(ii) Send the CD-R disk media with the relevant information to FRA at the following address:

Creative Information Technology, Incorporated (CITI)
4601 North Fairfax Drive
Suite 1100
Arlington, VA 22203
703-548-3313 Extension 223
POC: Angelica Mamani

Issued in Washington, DC on October 19, 2005.

Joseph H. Boardman,

Administrator, Federal Railroad Administration.

[FR Doc. 05–21466 Filed 10–27–05; 8:45 am]

BILLING CODE 4910–06–C

Federal Register

Friday,

October 28, 2005

Part III

Environmental Protection Agency

40 CFR Parts 60 and 63

Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units; Standards of Performance; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0056; FRL–7989–3]

RIN 2060–AM96

Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On March 29, 2005, EPA published a final rule entitled ''Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List'' (Section 112(n) Revision Rule). (See 70 FR 15994.) Following that final action, the Administrator received two petitions for reconsideration. In response to those petitions, EPA is announcing its reconsideration of certain aspects of the Section 112(n) Revision Rule. We are requesting comment on the particular issues identified below for which we are granting reconsideration. Those issues are referenced briefly in the **SUPPLEMENTARY INFORMATION** section of the preamble and described more fully later in this preamble.

We are seeking comment only on the aspects of the Section 112(n) Revision Rule specifically identified in this notice. We will not respond to any comments addressing other aspects of the Section 112(n) Revision Rule or any related rulemakings.

DATES: *Comments.* Comments must be received on or before December 19, 2005. Because of the need to resolve the issues raised in this notice in a timely manner, EPA will not grant requests for extensions beyond this date.

Public Hearing. A public hearing will be held on November 17, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0056 (Legacy Docket ID No. A–92–55), by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2002–0056 (Legacy Docket ID No. A–92–55). 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://www.epa.gov/edocket,* 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.

Public Hearing. The public hearing will run from 8 a.m. to 5 p.m., Eastern time, and will be held in Room 111C at the EPA facility, Research Triangle Park, N.C. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice. The public hearing for this action will be held on the same date and at the same time and location as the public hearing for the related reconsideration action for the Clean Air Mercury Rule (CAMR), published elsewhere in today's **Federal Register**.

If no one contacts Ms. Garrett in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

Docket. The EPA has established an official public docket for today's notice, including both Docket ID No. OAR–2002–0056 and Legacy Docket ID No. A–92–55. The official public docket consists of the documents specifically referenced in today's notice, any public comments received, and other information related to this notice. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's notice. 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 and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general and technical information, contact Mr. William Maxwell, Combustion Group, Emission Standards Division, Mailcode: C439–01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5430; fax

number: (919) 541–5450; e-mail address: *maxwell.bill@epa.gov.* For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mailcode: C439–01, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; fax number: (919) 541–5450; e-mail address: *garrett.pamela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information presented in this preamble is organized as follows:

I. General Information
A. Does this reconsideration notice apply to me?
B. How do I submit CBI?
C. How do I obtain a copy of this document and other related information?
II. Background
III. Today's Action
IV. Discussion of Issues Subject to Reconsideration
A. Legal Interpretations
B. EPA's Methodology and Conclusions Concerning Why Utility Hg Emissions Remaining After Imposition of the Requirements of the CAA are not Reasonably Anticipated to Result in Hazards to Public Health
C. Detailed Discussion of Certain Reconsideration Issues Related to Coal-Fired Utility Units as Set Forth in Section VI of the Final Section 112(n) Revision Rule
D. EPA's Decision Related to Nickel (Ni) Emissions from Oil-Fired Utility Units
E. Documents Identified by Petitioners that are Dated After the Close of the Public Comment Period
V. Clarification and Correction of Statements Made in Final Section 112(n) Revision Rule
VI. Statutory and Executive Order (EO) Reviews
A. EO 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. EO 13132: Federalism
F. EO 13175: Consultation and Coordination With Indian Tribal Governments
G. EO 13045: Protection of Children from Environmental Health and Safety Risks
H. EO 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)

I. General Information

A. Does This Reconsideration Notice Apply to Me?

Categories and entities potentially affected by today's notice include:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	[2]221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal Government	[2]221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's notice. This table lists examples of the types of entities EPA is now aware could potentially be affected by today's notice. Other types of entities not listed could also be affected. If you have questions regarding the applicability of today's notice to a particular entity, consult Mr. William Maxwell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Do I Submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How Do I Obtain a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

On March 15, 2005, EPA signed a final action that revised the Agency's December 2000 finding made pursuant to Clean Air Act (CAA) section 112(n)(1)(A), and based on that revision, removed coal- and oil-fired electric utility steam generating units (Utility Units or power plants) from the CAA section 112(c) source category list. The final Section 112(n) Revision Rule was published on March 29, 2005. (See 70 FR 15994.) CAA section 112(n)(1)(A) is the threshold statutory provision underlying the Section 112(n) Revision Rule. That provision requires EPA to conduct a study to examine the possibility of hazards to public health that are reasonably anticipated to occur as the result of hazardous air pollutant (HAP) emissions from Utility Units after imposition of the requirements of the CAA. The provision also provides that EPA shall regulate Utility Units under CAA section 112, but only if the Administrator determines that such regulation is both ''appropriate'' and ''necessary'' considering, among other things, the results of the study. EPA completed the study in 1998 (the Utility Study), and in December 2000 found that it was appropriate and necessary to regulate coal- and oil-fired Utility Units under CAA section 112. That December 2000 finding focused primarily on mercury (Hg) emissions from coal-fired Utility Units. In light of the finding, EPA in December 2000 listed coal- and oil-fired Utility Units on the CAA section 112(c) list of regulated source categories. On January 30, 2004 (69 FR 4652), EPA proposed revising the December 2000 appropriate and necessary finding and, based on that revision, removing coal- and oil-fired Utility Units from the CAA section 112(c) list.

In the final Section 112(n) Revision Rule, EPA revised the December 2000 appropriate and necessary finding, having concluded that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under

CAA section 112. EPA took this action because the December 2000 finding lacked foundation and EPA received new information that confirmed that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based solely on the revised finding, EPA removed coal- and oil-fired Utility Units from the CAA section 112(c) list.

The final Section 112(n) Revision Rule discusses, among other things, two other recent rulemakings. First, on March 10, 2005, EPA finalized the Clean Air Interstate Rule (CAIR), which will reduce nitrogen oxide (NO_X) and sulfur dioxide (SO_2) emissions from coal-fired power plants by about 70 percent when fully implemented. As explained in the final Section 112(n) Revision Rule, EPA expects Hg co-benefit emissions reductions from CAIR. CAIR was published on May 12, 2005. (See 70 FR 25162.)

Second, on March 15, 2005, EPA signed the final CAMR and established standards of performance for Hg for new and existing coal-fired Utility Units, as defined in CAA section 111. CAMR was published on May 18, 2005. (See 70 FR 28606.)

Following promulgation of the Section 112(n) Revision Rule, the Administrator received two petitions, filed pursuant to CAA section 307(d)(7)(B), requesting reconsideration of many aspects of the final Section 112(n) Revision Rule.[1] The purpose of today's notice is to initiate reconsideration of certain issues raised in those petitions.[2]

[1] One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The other petition was submitted by five environmental groups and four Indian Tribes: The Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), the Natural Resources Council of Maine; the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Penobscot Indian Nation, and the Passamaquoddy Tribe of Maine (Indian Township and Pleasant Point) (Environmental petitioners). In this notice, the term ''petitioners'' refers only to those entities that filed petitions for reconsideration of the Section 112(n) Revision Rule with EPA.

EPA also received four petitions to reconsider the CAMR. EPA's response to those petitions is addressed in a separate **Federal Register** notice published today.

[2] In a letter dated June 24, 2005, we informed the petitioners that we intended to initiate a reconsideration process of the Section 112(n) Revision Rule for at least one issue raised in the petitions. We indicated that we would provide particulars in a subsequent **Federal Register** notice. This is that notice. Also in that June 24, 2005, letter, we denied petitioners' request that we administratively stay the Section 112(n) Revision Rule under section 307(d)(7)(B). On August 4, 2005, the DC Circuit denied a similar request to stay the Section 112(n) Revision Rule pending the outcome of the litigation challenging the rule.

III. Today's Action

Today, we are granting reconsideration of, and requesting comment on, many of the issues raised in the two petitions for reconsideration. Generally, the petitioners claim the final Section 112(n) Revision Rule contains legal interpretations and information that are of central relevance to the final rule but that were not sufficiently reflected in the proposed rule, and that they, therefore, did not have an adequate opportunity to provide input on these matters during the designated public comment period.

Further, the petitioners contend that additional information has become available since the close of the public comment period, and that this new information is also of central relevance.

The EPA recognizes that there is a high degree of public interest in the final rule. The public had three opportunities to submit comments on the rulemaking, following the January 30, 2004, Notice of Proposed Rulemaking (NPR), the March 16, 2004, Supplemental Notice of Proposed Rulemaking (SNPR), and the December 1, 2004, Notice of Data Availability (NODA). EPA received, reviewed, and responded to thousands of documents. Thus, a robust public discussion of the rule has already occurred. Nonetheless, in the interest of ensuring ample opportunity to comment on all meaningful aspects of this important rule, we are granting reconsideration on certain issues and asking the public for additional comment. The issues for which we are granting reconsideration at this time, and for which we are soliciting comment, are discussed below.

Our final decision on reconsideration for all the issues for which we are not granting reconsideration today will be issued no later than the date by which we take final action on the issues discussed in today's action.

IV. Discussion of Issues Subject to Reconsideration

A. Legal Interpretations

In the final Section 112(n) Revision Rule, EPA explained, in detail, its interpretation of CAA section 112(n)(1)(A). Petitioners claim that many of the legal interpretations underlying the final Section 112(n) Revision Rule were not part of the proposal and, therefore, that they did not have an opportunity to comment on them during the designated comment period. They also contend that they did not have an opportunity to address EPA's application of its legal interpretations. At this time, EPA is opening for public comment several aspects of its legal interpretations and its application of those interpretations as provided in the final Section 112(n) Revision Rule.

As explained in the final Section 112(n) Revision Rule, Congress treated Utility Units differently from other major and area sources and provided EPA considerable discretion in determining whether to regulate such units under CAA section 112. CAA section 112(n)(1)(A) provides:

> The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

At this time, EPA grants reconsideration of its interpretation of the following terms and phrases in CAA section 112(n)(1)(A), and its application of those terms and phrases.

1. Hazards to Public Health Reasonably Anticipated To Occur as a Result of Emissions by Electric Utility Steam Generating Units

We solicit comment on all aspects of EPA's interpretation of the above phrase as set forth in the final Section 112(n) Revision Rule and its application of that phrase. Although we seek comment on all aspects of EPA's interpretation and application of the above phrase, we clarify certain points below and identify certain threshold issues raised by petitioners on which we seek additional comment.

As EPA explained in the final Section 112(n) Revision Rule, CAA section 112(n)(1)(A) does not define what constitutes ''hazards to public health reasonably anticipated to occur'' and EPA has the discretion to interpret those terms and, using its technical expertise, determine whether Hg emissions from

Utility Units pose such hazards. (See 70 FR 15997–98, 16023–25.) EPA also explained in the final Section 112(n) Revision Rule that CAA section 112(n)(1)(A) does not incorporate the requirements of CAA section 112(f), including, but not limited to, the two-part ample margin of safety inquiry set forth at 54 FR 38044 (September 14, 1989) (the benzene analysis), as referenced in CAA section 112(f)(2)(B). Accordingly, in evaluating ''hazards to public health reasonably anticipated to occur'' under CAA section 112(n)(1)(A), EPA is not subject to the requirements of CAA section 112(f). We are reiterating this point because the petitions exhibited some confusion in this regard.

EPA also noted in the final Section 112(n) Revision Rule that even assuming, arguendo, that the health-based aspect of the two-part ample margin of safety inquiry under CAA section 112(f) applied to CAA section 112(n)(1)(A) (which EPA maintains it does not), EPA's conclusions would not have differed from the conclusion it reached in analyzing hazards to public health reasonably anticipated to occur under CAA section 112(n)(1)(A). In this regard, EPA examined the two steps in the ample margin of safety inquiry under CAA section 112(f) from a public health perspective and concluded that even ''if we were proceeding under section 112(f), we would likely conclude that CAIR, and even more so CAMR, not only protects public health, but does so with an ample margin of safety.'' (See 70 FR 16025.) EPA specifically solicits comment on the above-noted conclusion and EPA's analyses in this regard. (See also section IV.C of today's notice.)

Finally, EPA specifically solicits comment on its interpretation that the relevant inquiry for assessing ''hazards to public health reasonably anticipated to occur'' under CAA section 112(n)(1)(A) is to focus on HAP emissions resulting from Utility Units. (See generally 70 FR 15998.)

2. After Imposition of the Requirements of the Act

We solicit comment on all aspects of EPA's interpretation of the above phrase as set forth in the final Section 112(n) Revision Rule and its application of that phrase. (See generally 70 FR 15998–99; section IV of the preamble to the final Section 112(n) Revision Rule.) Among other things, we solicit comment on EPA's reliance on CAIR in this regard.

3. Appropriate and Necessary After Considering the Results of the Study

We solicit comment on all aspects of EPA's interpretation of the term ''appropriate.'' Among other things, we seek comment on EPA's interpretation of CAA section 112(n)(1)(A) as allowing EPA to consider environmental impacts of emissions from Utility Units in the ''appropriate'' analysis, but only when EPA has already determined that hazards to public health are reasonably anticipated to occur as the result of utility HAP emissions. (See 70 FR 15997–98; section IV of the preamble to the final Section 112(n) Revision Rule.)

We further solicit comment on EPA's application of its interpretation of the term ''appropriate.'' We specifically solicit comment on EPA's application of the term ''appropriate'' in the context of utility-attributable emissions alone, which reflects EPA's interpretation of CAA section 112(n)(1)(A).

In their petitions, petitioners focus on EPA's alternative ''appropriate'' argument. Specifically, in the final Section 112(n) Revision Rule, EPA explained that even examining the entire global pool of Hg emissions, as opposed to utility-only attributable Hg (as EPA has interpreted CAA section 112(n)(1)(A)), EPA would still conclude that it is not appropriate to regulate coal-fired Utility Units on the basis of the global Hg pool under CAA section 112. We seek comment on this argument. (See 70 FR 16028.)

Moreover, we solicit comment on EPA's interpretation of the term ''necessary,'' but only insofar as EPA has interpreted that term as involving an analysis of whether the alternative legal authority identified, if implemented, would result in effective regulation, including, for example, its cost-effectiveness and administrative effectiveness. (See 70 FR 16001.) We also solicit comment on EPA's application of this aspect of the term ''necessary.'' We are not soliciting comment today on EPA's interpretation of the term ''necessary'' as involving an analysis of whether there is alternative authority under the CAA that, if implemented, would address hazards to public health associated with remaining utility-attributable HAP emissions.

We further solicit comment on EPA's interpretation of the phrase ''considering the results of the study'' and, in particular, that EPA is not foreclosed from examining relevant information that becomes available after the study. (See 70 FR 15999.) We also solicit comment on EPA's interpretation of CAA section 112(n)(1)(A) as authorizing EPA to revise a prior appropriate and necessary determination, where, as here, we believe that the December 2000 finding lacked foundation and that new information confirms that it is neither appropriate nor necessary to regulate HAP emissions from Utility Units under CAA section 112. (See 70 FR 16001.)

EPA's interpretation of the above identified terms and phrases in CAA section 112(n)(1)(A) is set forth, in full, in the final Section 112(n) Revision Rule and commenters should refer to that discussion in formulating any comments. In particular, commenters may want to review sections III, IV, V, and VI of the final Section 112(n) Revision Rule.

EPA also specifically solicits comment on EPA's interpretation of CAA sections 112(n)(1)(A) and 112(c)(9), and its explanation as to why the requirements of CAA section 112(c)(9) do not apply to EPA's removal of Utility Units from the CAA section 112(c) source category list. (See generally section VIII of the final Section 112(n) Revision Rule.)

B. EPA's Methodology and Conclusions Concerning Why Utility Hg Emissions Remaining After Imposition of the Requirements of the CAA Are Not Reasonably Anticipated To Result in Hazards to Public Health

In section VI of the final Section 112(n) Revision Rule, EPA set out a methodology for evaluating utility Hg emissions and deposition. That methodology, among other things, assesses the amount of utility-attributable methylmercury (MeHg) levels in fish tissue and the amount of fish consumption and evaluates the resulting public health effects. EPA also set forth in section VI its conclusions based on that methodology. At this time, EPA is opening for public comment all aspects of this methodology and the conclusions EPA reached, as described and justified in section VI and the associated Section 112(n) Revision Rule technical support documents (TSD).

EPA is also granting reconsideration with respect to materials included in the CAIR docket that EPA incorporated by reference into the docket for the final Section 112(n) Revision Rule, as they pertain to the methodology in section VI of the final Section 112(n) Revision Rule. We ask that anyone who comments on materials in the CAIR docket explain why their comments are pertinent to the issues on which we are granting reconsideration today.

Many of the analytical tools (e.g., Community Multiscale Air Quality model (CMAQ), Mercury Maps (MMaps)) and data sources (e.g., emissions inventories, GEOS–CHEM global background, and fish tissue concentrations) relevant to the methodology described in section VI of the final Section 112(n) Revision Rule

were described in the NODA and the public, therefore, had an opportunity to comment on them previously. Nevertheless, EPA today grants the petitioners' request for an additional opportunity to comment on those analytical tools and data sources, including how they informed our final decision, as discussed in section VI of the final Section 112(n) Revision Rule. Among other things in Section VI, we solicit comment on EPA's treatment of the uncertainties in the analysis that support its determination that utility-attributable Hg emissions remaining after CAIR, and independently CAMR, are not ''reasonably anticipated to result in hazards to public health.''

Although we are granting reconsideration on the entire methodology and our associated conclusions set forth in section VI of the final Section 112(n) Revision Rule, the following section of this preamble includes additional discussion concerning particular aspects of that methodology.

C. Detailed Discussion of Certain Reconsideration Issues Related to Coal-Fired Utility Units as Set Forth in Section VI of the Final Section 112(n) Revision Rule

As explained in the prior section, EPA grants reconsideration of its methodology and conclusions contained in section VI of the final Section 112(n) Revision Rule. In this section, we provide additional information and discussion concerning specific aspects of the methodology described in section VI of the final Section 112(n) Revision Rule for which we are soliciting comment.

1. Modeling of Hg Deposition Changes That Result From Implementation of CAIR and CAMR

The petitioners claim that EPA did not provide adequate notice of how EPA intended to use the CMAQ model or of the results from CMAQ model runs. In addition, some petitioners claim that EPA's reliance on the CMAQ model was flawed because (a) the model has not been used before for Hg modeling, (b) the model has not been peer reviewed, and (c) EPA conducted an inadequate performance evaluation. Other petitioners assert that CMAQ is not precise enough to estimate deposition for the purposes of the final Section 112(n) Revision Rule because the grid size is too large to investigate the possibility of utility hotspots. These petitioners add that CMAQ under-predicts wet deposition and that its dry deposition rates are inaccurate because there is no dry deposition monitoring against which to evaluate the model predictions. Petitioners add that EPA's averaging of the model-predicted grid-cell-wide average deposition across all grid cells in a watershed obscures areas of higher deposition.

Through the NODA, EPA solicited and received public comment on CMAQ and how EPA intended to use it generally, and responded to those comments in the final Section 112(n) Revision Rule. Even so, as noted above, in the interests of ensuring full opportunity for the public to comment, we grant reconsideration of EPA's use of CMAQ in its public health analysis, and solicit comment on the documentation for CMAQ and the substantive points raised by petitioners, in particular. In addition, we have developed additional information, summarized below, on some of the points raised by petitioners, and solicit comment on that information.

a. Prior Use, and Peer-Review, of the CMAQ Model. The CMAQ model used in the Section 112(n) Revision Rule has been used for Hg modeling previously in model evaluation studies, although not to support a regulatory analysis. We solicit comment on the following information concerning peer review, some of which was included in the docket at the time of the final Section 112(n) Revision Rule, others of which we have added more recently in support of today's notice.

The CMAQ model has been peer reviewed, as noted in section III of the ''Modeling TSD'' (Technical Support Document for the Final Clean Air Mercury Rule: Air Quality Modeling; OAR–2002–0056–6130).[3] The CMAQ Hg module is primarily documented in the peer reviewed *Atmospheric Environment* journal article documented in the Modeling TSD (Bullock and Brehme, 2002). In addition the entire CMAQ model, including the Hg updates documented in the Modeling TSD, underwent further peer review in May 2005. A report containing the results of this peer review is available in the docket (and is also publicly available at *http://www.cmascenter.org*).

Concerns have also been raised over the exclusion of the State of Alaska (Healy Plant), the State of Hawaii (AES—Hawaii), and the U.S. Territories from the modeling analyses supporting CAMR. The primary reason for this exclusion is that the meteorological model (Mesoscale Meteorological Model, Version V, which drives the atmospheric chemistry simulation in CMAQ) does not include these remote areas in its current modeling domain. Thus, there is no available meteorological information to assess the transport, diffusion, and deposition from sources in these regions in the CMAQ modeling analyses.

Moreover, EPA assessed the magnitude of emissions from coal-fired power plants in Alaska and Hawaii in the 1999 ICR data and determined that these plants emitted 0.0155 percent and 0.0162 percent, respectively, of the total 48 tons of Hg emissions in 1999. Given the magnitude and density of power plant emissions in the lower 48 States, and the conclusion stated in the final Section 112(n) Revision Rule that emissions in the lower 48 States, after the implementation of CAIR (and moreover CAMR), are not reasonably anticipated to result in hazards to public health, EPA does not reasonably anticipate that Hg emissions from units located in Alaska, Hawaii, and the U.S. Territories pose hazards to public health.

b. CMAQ Model Evaluation. We solicit comment on the evaluation of the CMAQ model performance summarized in section VI of the Section 112(n) Revision Rule and discussed more fully in section IV of the Modeling TSD. In particular, we seek comment concerning our conclusion that the model performance for CMAQ Hg deposition falls within what has been considered reasonable model performance for ozone and particulate matter model applications.

Currently, there is no continuous measurement network for Hg dry deposition in part because there is no low-cost dry measurement method available for use in such a network. Thus, we are not able to evaluate model performance for Hg dry deposition by comparing model predictions to monitored observations. Nonetheless, we believe our use of CMAQ adequately accounts for Hg dry deposition.

As discussed in the Modeling TSD, the best current scientific understanding is that wet Hg deposition and dry Hg deposition are roughly equal in magnitude. In a recent peer-reviewed journal article, Miller et al. (2005)

[3] CMAQ Review Panel, 2004: Final Report Summary: December 2003 Peer Review of the CMAQ Model. *http://www.cmascenter.org/html/CMAQ%20peer%20review%20final_CMAS-web.pdf*, Carolina Environmental Programs, Chapel Hill, NC.

CMAQ Review Panel, 2005: Final Report: Second Peer Review of the CMAQ Model. Carolina Environmental Programs, Chapel Hill, NC (*http://www.cmascenter.org*).

Byun, D., and K.L. Schere, 2005: Review of the Governing Equations, Computational Algorithms, and Other Components of the Models-3 Community Multiscale Air Quality (CMAQ) Modeling System. *Applied Mechanics Reviews* (in press).

discuss in detail the state-of-the-science regarding monitoring wet and dry deposition in North America. In general, areas with high precipitation amounts may have more wet Hg deposition and areas with low precipitation amounts may have more dry Hg deposition. The total national CMAQ Hg wet deposition is roughly equal in magnitude to the total national dry deposition (see Modeling TSD) while CMAQ predicts more dry deposition in dry areas of the country and more wet deposition in wet areas of the country, as empirical evidence would support. (Miller, et al., 2005).

c. Changes in Deposition Predictions. Petitioners state that the model predictions of higher Hg deposition rates in a 2001 scenario in which Utility Unit emissions are zeroed-out, compared to a 2020 scenario in which Utility Unit emissions are reduced but not zeroed-out, reveal the inaccuracies of the model.

The 2001 utility emissions zero-out scenario results in lower Hg deposition than the 2020 with CAIR scenario in the high utility-attributable Hg emissions area of the Ohio River Valley and western Pennsylvania. The CMAQ model predicts lower utility Hg deposition for the 2001 utility Hg emissions zero-out scenario than for the 2020 with CAIR scenario in the areas of highest utility Hg emissions.

There are a few scattered small areas of the country where the 2001 Hg deposition with utility Hg emissions zeroed-out are higher than the 2020 with CAIR Hg deposition. However, these are in areas where local non-utility sources of Hg emissions have decreased between 2001 and 2020. In the 2020 with CAIR scenario, not only are utility Hg emissions reduced from the 2001 scenario, but local non-utility sources of Hg emissions are also reduced from the 2001 scenario (see table 2 of the Modeling TSD). Thus, the reason that the model predicts higher Hg deposition in some scattered areas for the 2001 utility zero-out scenario, compared to the 2020 with CAIR scenario, is due to decreased Hg emissions from non-utility Hg emissions sources in the 2020 with CAIR scenario.

d. Grid Cell Size and Averaging Across Grid Cells in a Watershed. Petitioners assert that averaging deposition within the 36 kilometer (km) grid cell, and averaging deposition across all grid cells within a watershed, results in imprecise estimates of the effects of Hg emissions on fish tissue in waterbodies. As explained in the final Section 112(n) Revision Rule and section 2.1 of the ''Effectiveness TSD'' in support of the final Section 112(n) Revision Rule (Methodology Used to Generate Deposition, Fish Tissue Methylmercury Concentrations, and Exposure for Determining Effectiveness of Utility Emission Controls, OAR–2002–0056–6301, OAR–2002–0056–6190), we believe that averaging Hg deposition within a grid cell, and then across all grid cells that comprise a watershed, is a reasonably accurate methodology to indicate the impact of Hg deposition on fish tissue levels in waterbodies within a given watershed.

Processes operating at the watershed (8-digit hydrologic unit code (HUC)) level likely influence MeHg concentrations in fish at any given location within the ecosystem. As water moves through the watershed, Hg that has been deposited from the atmosphere will also move through the HUC. Fish living in the aquatic ecosystem can move as well. Some species migrate, while others may travel significant distances in large lakes and through river and stream networks while other species remain within smaller geographic areas. Therefore, there is additional geographic uncertainty associated with where the fish are exposed to Hg deposition. Additionally, many fishers visit numerous waterbodies to fish. Averaging to a larger geographic unit (U.S. Geological Survey (USGS) 8-digit HUC) representative of an ecosystem unit (watershed) helps us to avoid modeling false precision between the exposure of fish and the source of the deposited Hg, and fishing activity.

Given all of these factors, averaging enables us to produce an accurate regional or watershed level picture of deposition. Thus, 36 km resolution CMAQ output, which is generally somewhat smaller than the 8-digit HUC resolution, is an appropriate geographic resolution from which to analyze air deposition of Hg to the ecosystem, and averaging deposition across grid cells within a given watershed enables a watershed-level characterization of Hg.

2. EPA's Method for Determining How Changes in Utility-Attributable Hg Deposition Would Result in Changes in Concentrations of MeHg in Fish Tissue.

Petitioners claim that the 1,633 sample sites for fish tissue MeHg levels are too few to adequately represent the millions of lake acres and river miles in the U.S. They also argue that the samples do not adequately represent the places where people regularly fish, and in particular that the geographic scope of sample sites is too limited. Petitioners also contend that EPA's elimination of small-sized fish samples resulted in too few sites for Virginia, Pennsylvania, Ohio, and certain other States, even though most of the utility-attributable Hg deposition occurs in these States.

We solicit comment on the sufficiency of the sample site data set for the analytic purposes described in the final Section 112(n) Revision Rule, in particular the specific issues raised by the petitioners. In addition, we solicit comment on the additional information that we have developed, described below, which is pertinent to the concerns expressed by the petitioners, as noted above.

We have re-examined aspects of the sufficiency of the fish tissue data set related to fish tissue concentrations and believes that because it is not realistic to directly sample, on a yearly basis, over 40 million lake acres and 3 million miles of river, the issue is whether the available samples comprise a representative sample of U.S. waterbodies. As part of this evaluation, EPA examined the geographic area that a single sample represents.

We have examined the similarity of sample sites within a particular geographic area. We define similarity in terms of variance, which is the average squared deviation of all values from the mean. The values are the levels of MeHg in fish tissue at the sample sites. We determine variance on the basis of all the values within particular geographic units.

Our exploratory studies have found that samples taken from within the same watershed are reasonably similar to each other. They are more similar to each other than samples taken within larger geographic areas like States or the entire nation. EPA has examined whether samples continued to be more alike at the smaller geographic unit of a county. The samples are not greatly more alike within counties than they are within watersheds (which can contain several counties). Variance among fish tissue concentrations from across the nation is 0.21 parts per million (ppm). Average variance within States is 0.07 ppm. Average variance within watersheds is 0.053 ppm, and average variance within counties is 0.050 ppm.

The difference between a geographic unit of analysis on the county level, compared to a watershed level is, 0.003 ppm in variance. This represents less than a 1 percent decrease in variance within the sample data, an amount which is quite small. Note that in the Effectiveness TSD, the average concentration is 0.43 ppm.

The relatively small amount of variance within a watershed of 0.053 ppm, compared to the average concentration of 0.43 ppm, and the comparability of the intra-watershed

variance with intra-county variance, supports EPA's use of the available fish tissue samples to adequately represent MeHg levels over a watershed.

Applying this assumption of representativeness means that the fish tissue sample data are representative of all the rivers and lakes found within the watersheds in which they were taken. The set of fish tissue concentration samples used for the Effectiveness TSD covers approximately 24.5 percent of all the HUCs which, in turn, contain 50 percent of lakes and 25 percent of river miles in the U.S. While EPA does recognize that there are HUCs from which no fish tissue samples have been taken, our sample set provides an adequate regional, watershed-level characterization.

The adequate portrayal or characterization of concentrations in areas that have not been sampled can lead to more uncertainty in the analyses. The unavailability of predictive models to accurately estimate values of Hg concentrations in fish where no samples have been taken makes it difficult to quantitatively assess how representative of unsampled geographic locations the existing sample data set is. Thus, to assess the coverage of the available data set of fish tissue samples, we can examine how similar the data set is to other data resources that provide complete national coverage, and are believed to be related to fish tissue concentrations. Total air mercury deposition is one such data set.

It is not unreasonable to assume that the fish tissue samples would have similar statistical characteristics to Hg deposition concentrations. In other words, if total Hg concentrations are dependent upon total Hg deposition, we would expect the distributional properties in each data set to be similar. The degree of similarity between the distributional properties of the two data sets (deposition and fish tissue concentrations) can be somewhat assessed by a visual comparison of the patterns shown in figures 2.9 and 3.4 of the Effectiveness TSD.

Figures 2.9 and 3.4 graphically depict the cumulative distributions for the two data sets—Hg deposition and fish tissue concentration. A visual comparison of these two distributions reveals similar distributional properties. Both data sets show that small numbers of observations (samples/HUCs) have low values, while the majority of the data are within a tightly defined middle range, with the highest concentrations deviating further from the rest of the data, but small in numbers compared with the overall data set.

While examining these data sets in this manner does not conclusively or quantitatively prove that new fish tissue samples would never be outside the statistical range of the existing distributions (minimum and maximum value), it does suggest that if air deposition and fish tissue concentrations have similar distributions, the fish tissue sample data set is representative of the total population of U.S. fish. Thus, the sample of fish tissue concentrations available to EPA for the Effectiveness TSD in support of the final Section 112(n) Rule analyses is adequate to reasonably characterize the range of potential health risks.

In response to petitioners' argument that there are not enough samples in the West, we note that in the Effectiveness TSD, which focuses on examining the role coal-fired power plants play in Hg deposition and fish tissue concentration, the lower density of samples in the West is of comparatively little concern because of the low utility-attributable Hg deposition there. Figure 2.2 of the Effectiveness TSD shows that in the West, Hg deposition from power plants is less than 1 microgram per square meter ($\mu g/m^2$), while in the East, it can account for average HUC levels as high as 20 $\mu g/m^2$. Although these data do not mean that the West is not of any concern, they do show that utility-related impacts are significantly lower in the West than in the East, and, therefore, they do not form a significant portion of the foundation of EPA's decision.

3. EPA's Approach to Estimating Utility-Attributable Exposure

Petitioners provide substantive comments on certain aspects of EPA's decision regarding exposure pathways and health risks associated with Hg exposure. We provide further information below on some of the points they raise, and we solicit comment on this information.

a. Exposure Pathways. The petitioners assert that EPA, by limiting its focus to one fish consumption pathway of Hg exposure—freshwater fish caught by recreational and subsistence fishers—failed to adequately evaluate four other fish consumption pathways for human Hg exposure: (a) Marine (saltwater) fish, (b) commercial freshwater fish, (c) fish produced through aquaculture, and (d) estuarine fish. Furthermore, the petitioners charge that EPA failed to explain the rationale for assessing these pathways qualitatively.

Petitioners are correct that considering the total concentrations of MeHg in fish tissue resulting from all sources of Hg emissions (including global sources), marine fish present the primary source of Hg exposure to most persons living within the U.S. However, as explained in the final Section 112(n) Revision Rule, EPA has interpreted CAA section 112(n)(1)(A) as calling for an analysis of the hazards to public health reasonably anticipated to occur as the result of emissions by Utility Units. Thus, as explained in the final Section 112(n) Revision Rule, the proper inquiry for purposes of CAA section 112(n)(1)(A) is to examine the concentrations of MeHg in fish tissue that result from U.S. coal-fired power plant Hg emissions. As discussed in the final Section 112(n) Revision Rule, emissions of Hg from U.S. coal-fired power plants most significantly impact concentrations of MeHg in freshwater fish; thus, it was appropriate for EPA to focus on this pathway in the CAA section 112 rulemaking. Nonetheless, we recognize that other exposure pathways may still contribute to the total exposure from U.S. coal-fired power plant Hg emissions, and, thus, we explore them more fully below and in the ''Reconsideration TSD'' in support of the final Section 112(n) Revision Rule (Technical Support Document: Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List: Reconsideration). EPA solicits comment on all of these issues, comments, and analyses.

Marine Fish Pathway. The petitioners argue that because utility-attributable Hg deposits in areas where marine fishing occurs, human health impacts attributable to power plant Hg emissions should be reasonably anticipated, noting that a number of commercially important marine fish have relatively high Hg concentrations.

In the Effectiveness TSD, EPA did acknowledge that marine systems could be affected by U.S. power plant Hg emissions, but concluded that based on the available science marine species do not appear to be significantly affected by Hg emissions from U.S. power plants. The actual quantification of this impact was not conducted because of the scientific uncertainty in modeling marine systems. (See Reconsideration TSD, section 2.) For today's action, EPA conducted an analysis using upper-bound assumptions, including the assumption of a proportional relationship between decreases in utility-attributable Hg deposition and decreases in MeHg fish tissue concentration. (See Reconsideration

TSD, section 3.) The conclusion of this analysis reinforces our conclusion to focus our previous quantitative analysis on self-caught freshwater fish, not marine fish. This conclusion is based on the small contribution of the U.S. power plant Hg emissions to open ocean environments. High-end consumers eating over 200 grams per day of a cross-section of marine fish would have an Index of Daily Intake (IDI) value of about 0.05.[4] (See Reconsideration TSD, table 3.2.) Even if this high-end consumer exclusively ate marine fish with one of the highest utility-attributable MeHg concentration levels, the consumer would have an IDI value below one. (See Reconsideration TSD, table 3.3.) Given that the IDI values for the marine fish pathway are significantly less than one for moderate consumption rates and less than one even for the extreme combination of high consumption rate of marine fish with high MeHg levels, EPA maintains that marine fish are a pathway of small concern when evaluating the health impact of Hg emissions from U.S. power plants.

Aquaculture Fish Exposure Pathway. The petitioners assert that our qualitative treatment of utility-attributable Hg exposure due to U.S. aquaculture fish was not adequate. EPA acknowledged in the Effectiveness TSD that we lacked ''sufficient information to characterize the impact of utility emissions on aquaculture'' due to the unique nature of the aquaculture pathway and gaps in the available data. By this statement, we meant that we were not able to provide a quantitative estimate then. Nor can we do so now. As explained in section 5 of the Reconsideration TSD, the concentration of MeHg in aquaculture fish is dependent on the MeHg content of the fish products fed to aquaculture fish. Thus, it is the location and type of the fish caught to make fish feed, as opposed to the location of aquaculture farms, that is relevant to assessing the utility-attributable concentration of MeHg in aquaculture fish. Furthermore, many of the commonly consumed aquaculture fish species (e.g., catfish) tend to have lower concentrations of MeHg than many of the commonly consumed marine fish, and the total amount of aquaculture fish consumed in the U.S. is substantially less than the total amount of marine fish consumed in the U.S.

Having already concluded that an upper-bound estimate of utility-attributable Hg exposure due to marine fish is small and that the utility-attributable Hg exposure due to aquaculture is smaller than for marine fish, we reasonably conclude that the utility-attributable Hg exposure due to aquaculture fish is minimal.

Estuarine Fish Exposure. EPA believes that the state of the science currently does not support a national-scale quantitative analysis for this component of the exposure pathway. The studies cited as examples by the petitioners assumed a proportional relationship between declines in Hg deposition and declines in MeHg concentrations in estuarine fish. However, while such an assumption is supported for freshwater systems, it has not been endorsed by EPA or the scientific community as an appropriate method for characterizing the effects of Hg emissions reductions on MeHg estuarine fish concentrations. (See section 4.1 the Reconsideration TSD.)

EPA finds that the available data indicate that the utility-attributable exposure to Hg from estuarine fish and shellfish will likely be small relative to that from self-caught freshwater fish.

We estimate that the total exposure from the entire global Hg pool (i.e., all Hg sources, including, but, not limited to power plants,) associated with consumption of estuarine and near-coastal fish is roughly one third of the exposure from all marine species. This fraction includes near-coastal fish caught on the Pacific Coast and other areas not significantly affected by U.S. power plants. This estimate of total Hg exposure from estuarine species is thought to be an upper bound because it is based on total Hg concentrations in shellfish rather than MeHg concentrations, the Hg species that is toxicologically most significant. (See section 4 of the Reconsideration TSD.)

Of the Hg exposure associated with the consumption of estuarine and near-coastal fish, we estimate that the utility-attributable fraction is small. As described in section 4 of the Reconsideration TSD, utility deposition after CAIR, and even more so after CAMR, is small in the coastal areas, especially taking into account estuarine and near-coastal fisheries on the West Coast. Finally, populated coastal regions like the Chesapeake Bay and Baltimore Harbor (Mason and Lawrence, 1999) will receive significant land-based (e.g., point source discharges) Hg inputs from wastewater effluents, municipal waste discharges, and historical Hg contamination that is slowly leaching from the watershed.

Although we are not able to provide a national-scale quantitative estimate of the utility-attributable Hg exposure from the consumption of estuarine and near-coastal species of fish and shellfish, for all of these reasons we conclude that this exposure pathway is small relative to the self-caught freshwater pathway.

Commercial Freshwater Fish Exposure Pathway. The petitioners raised concerns over the contribution of commercial freshwater fish to human Hg exposures. Specifically, the petitioners are concerned that the annual Great Lakes commercial freshwater fish harvest is 17 million pounds and EPA's air deposition modeling shows that relatively higher levels of utility-attributable Hg deposition, after CAIR and CAMR, occurs in the Great Lakes region.

Freshwater commercial fish are not a significant exposure pathway because a total consumption of 17 million pounds/year (lb/yr) is small when compared to recreational freshwater fish consumption of 377 million lb/yr (see section 6, Reconsideration TSD), or 22 times the Great Lakes' commercial haul.[5] Further, even though utility-attributable Hg deposition is comparatively higher around the Great Lakes and the regional watershed surrounding the Great Lakes as defined by the USGS, in comparison with the rest of the U.S., it is still only a small percentage of Hg deposition from all sources. Within small HUC cataloging units, the average percent of total Hg deposition that is attributable to power plants in these areas is approximately 14 percent in 2001. By 2020 after CAIR, this will decrease to approximately 8 percent. After CAMR, utility-attributable deposition decreases further to approximately 7.5 percent. Thus, following the assumptions in MMaps, approximately 10 percent of the Hg in the fish found in this area is attributable to power plants.

As described above, the commercial freshwater harvest is small compared to recreational freshwater consumption. Additionally, only a portion of the commercial freshwater harvesting area is affected by comparatively higher concentrations of utility-attributable Hg deposition in $\mu g/m^2$ (Lakes Michigan, Erie, and Huron), and the Great Lakes utility-attributable Hg deposition is not disproportionately higher than the immediately surroundings areas for

[4] As described in the final Section 112(n) Revision Rule, the IDI is an index of exposure to Hg due solely to power plants. An IDI of 1 or greater indicates that an individual exposure to Hg from power plants is equal to or exceeds the EPA reference dose (RfD) for Hg due solely to utility-attributable Hg exposure. (See 70 FR 16021.)

[5] The Great Lakes commercial haul is 0.2 percent of the total commercial haul. The marine haul represents the most significant fraction of the total haul and is discussed elsewhere. (See Reconsideration TSD, section 6.)

recreational freshwater harvest. All of these factors lead us to believe that the commercial freshwater fish exposure pathway is still expected to be small relative to the national recreational freshwater exposure pathway.

Although we are not able to provide a national-scale quantitative estimate of the utility-attributable Hg exposure from the consumption of commercial freshwater species of fish, for all of the reasons discussed above, we conclude that exposure from this pathway is small.

b. Joint Consumption. In order to examine utility-attributable Hg exposure from total fish consumption quantitatively, it would be necessary to have information on the distribution of consumption of each type of fish—recreational freshwater, commercial freshwater, recreational saltwater, etc—as well as utility-attributable MeHg concentrations (either sufficiently accurate or upper-bound) for each type of fish. If we were able to identify the consumption of each type of fish as well as utility-attributable MeHg concentrations for each type of fish, then the IDI values from each type of fish could be calculated and added together to arrive at a total IDI value. Currently no such data exists. While we are not able to develop a quantitative estimate, for the reasons described above and in the Reconsideration TSD, EPA maintains that self-caught freshwater fish consumption represents the most significant exposure pathway for the populations with the highest utility-attributable exposure.

At any given total fish consumption rate noted in our analyses, introducing aquaculture, marine, or estuarine fish into the diet of a self-caught freshwater fish consumer necessarily implies reducing consumption of self-caught freshwater fish (e.g., in order to maintain the same total fish consumption rate). As discussed in previous sections, because power plants contribute more Hg to freshwater fish species than to any other fish species, such substitution implies a lower IDI than is associated with consumption of self-caught freshwater fish alone, supporting the assertion that self-caught freshwater fish consumption represents the primary source of utility-attributable Hg exposure. Hence, for any given consumption rate, consumption of self-caught freshwater fish alone leads to a higher IDI than that of any other combination of fish, supporting our decision to focus our analysis on consumption of self-caught freshwater fish.

Table 6.4 of the Effectiveness TSD (US EPA 2005a) shows an array of consumption values combined with percentiles of MeHg concentration in freshwater fish. Results for 2020 with CAIR indicate that estimated IDIs are all well below 1 for the first three consumption rates. Estimated IDIs are over one for 99th percentile recreational fishers and mean subsistence Native Americans only when all of the fish consumed has MeHg concentrations at the 99th percent level, a convergence of factors which is unlikely to occur. (See 70 FR 16024.) Estimated IDIs for the 95th (170 g/day) and 99th percentile (295 (g/day) subsistence Native American consumers are above one for lower percentile MeHg concentration fish. It is unlikely that these consumers would add significant amounts of non-self-caught freshwater fish to their diets over the course of a year, but rather would substitute fish, again supporting our focusing on the consumption of self-caught freshwater fish.

Further, we have no evidence that high-end consumers of self-caught fish also consume other types of fish. It is highly unlikely that subsistence individuals eating 170 g/day or 295 g/day of self caught freshwater fish would also consume significant quantities of marine fish. Even if we were to assume that these consumers do eat additional fish, the additional MeHg ingested by these consumers is believed to be small as described above. For scenarios in which the IDI value is below one, it is unlikely that a consumer would add a sufficient amount of other fish (with lower utility-attributable MeHg concentrations than freshwater fish) to their freshwater fish diet to cause their IDI to exceed one.

4. Utility Hotspots

In the final Section 112(n) Revision Rule, we explained that we do not believe that there will be any utility hotspots after implementation of CAIR. In the final Section 112(n) Revision Rule, we defined a ''utility hotspot'' as a waterbody with utility-attributable MeHg levels in excess of the MeHg water quality criterion of 0.3 ppm (milligram per kilogram (mg/kg)). The methodology for calculating an exceedence of the MeHg water quality criterion is explained in the Effectiveness TSD, including the approach of looking at the highest MeHg concentration fish species and averaging across samples within that species.

The petitioners asserted that this definition of a ''utility hotspot'' differs from the definition in the NPR. The petitioners also asserted that EPA's definition of a utility hotspot differs from the common understanding of that term and, therefore, obscures what the petitioners consider to be waterbodies with problematically high levels of MeHg. The petitioners further stated that the water quality criterion that EPA uses as the basis of its definition of a utility hotspot is defective in that it is based on assumptions about fish consumption habits that, the petitioners assert, are incorrect. The petitioners also stated that EPA's definition fails to consider that even when utility-attributable Hg emissions may not be the sole cause of problematically high MeHg levels in a waterbody, they may contribute to existing background levels so that total MeHg levels are problematic. In addition, the petitioners objected to EPA's position that utility hotspots should not be considered a problem because even if they do occur, EPA can address them in the future.

Today, we grant the petitions to reconsider on the issue of how to define a ''utility hotspot'' for purposes of the finding concerning regulation of Utility Units under CAA section 112. We also solicit comment on our analysis and conclusions concerning utility hotspots, in section VI.J of the final Section 112(n) Revision Rule (70 FR 16025).[6]

5. Cross-Cutting Issues

a. Regulation of Power Plant Hg Emissions Under CAA Section 112 Beyond CAIR. In two separate sections of the final Section 112(n) Revision Rule, EPA makes statements comparing the costs of further controlling Hg emissions from coal-fired power plants to the benefits that may accrue from those additional reductions. The statements appear in the context of ''alternative arguments'' that EPA provided in addition to its main argument that utility Hg emissions remaining after implementation of CAIR, and even more so after CAMR, are not reasonably anticipated to result in hazards to public health. (See 70 FR 16025 (discussing CAA section 112(f)), and 70 FR 16028 (discussing utility-attributable Hg emissions in the context of the global pool).)

The Reconsideration TSD contains additional information supporting EPA's statements about the costs and benefits of further reductions of Hg emissions from Utility Units. As explained in the Reconsideration TSD, we evaluated the costs and benefits of regulating under section 112 beyond the level of CAIR using a screening analysis. In this regard, we presumed that the costs of regulating under section 112 are

[6] Petitioners note that EPA used different variations of the term ''hotspot'' in the final Section 112(n) Revision Rule. As part of this reconsideration process, we are clarifying that we mean ''utility hotspot.''

at least as great as the costs of regulating under CAMR. This assumption is a lower bound estimate of the potential costs of regulating under section 112. See Cost and Energy Impacts—Technical Support Document (Cost TSD). We further estimate the neurological benefits of the complete elimination of utility-attributable Hg after CAIR, which is an upper-bound estimate of the health benefits of regulating under section 112 beyond CAIR. As explained below, the lower bound cost of regulating under section 112 beyond the level of CAIR far exceeds the upper bound estimate of the benefits of such regulation. Therefore, regulating under section 112 beyond the level of CAIR would not be justified.

In particular, in the Reconsideration TSD, EPA performed an analysis of the upper bound of benefits of reduced intelligent quotient (IQ) decrements that could be obtained from eliminating exposure to U.S. power plant Hg emissions after CAIR. The analysis is a bounding analysis in the sense that the resulting health benefit estimate is almost certainly above the true health benefits of improved neurological performance associated with reducing Hg emissions from power plants.

The benefit calculation follows directly from the IDI values presented in table 6–4 of the Effectiveness TSD and the IDI values calculated for the marine pathway in the Reconsideration TSD. Using a dose-response relationship, we translate these IDI values into neurological improvements, using IQ points as a surrogate, were power plant Hg emissions to be eliminated. We then estimate the monetized value of these IQ point increments and discount these future monetized benefits to account for the ecosystem response time.

The total annualized cost of CAMR exceeds the upper bound estimate of the total health benefits from eliminating utility-attributable Hg exposure in 2020 after the implementation of CAIR. It should be noted, however, that CAMR does not eliminate all Hg emissions and that CAMR's cost estimate is based on a market-based approach, generally considered to be one of the lowest cost regulatory options.

Given that the total monetized costs of CAMR (which only partially eliminates remaining power plant Hg emissions after CAIR) exceed the total monetized benefits of eliminating all remaining power plant Hg emissions, it is reasonable to conclude that the cost of requiring further reductions in U.S. power plant Hg emissions beyond CAIR would significantly outweigh the benefits associated with reductions in IQ decrements. We request comment on these analyses and calculations.

Moreover, as noted below, even if EPA were to undertake a similar analysis for non-Hg HAP emissions from coal-fired Utility Units, we would likely conclude that the benefits from additional regulation of the non-Hg HAP under section 112 were not justified by the costs. This statement is supported by the Utility Study Report to Congress (see *http://www.epa.gov/ttn/atw/combust/utiltox/utoxpg.html#TEC*) The health benefits of eliminating non-Hg HAP would likely reduce cancer cases by only a few per year. (See ES–5 high-end estimate of 1.3 cancer cases per year from HAP from inhalation from coal-fired power plants). The multi-pathway assessment increases this estimate somewhat (see, for example, the estimate that radionuclides may increase risk by a small amount. ''The estimated cancer incidence in the U.S., due to emissions and dispersion of radionuclides within 50 km of each utility, is estimated to be 0.3 cancer deaths/yr.'' ES22.) The non-cancer risks are small. (''The highest estimated long-term ambient HAP concentration was 10 times below the RfC.'')

Using economic valuation of these health endpoints would not lead to significant monetized health benefits (see U.S. EPA, 2000, Guidelines for Preparing Economic Analyses, EPA 240–R–00–003, for a discussion of the Agency's methodology for valuing reduced premature mortality and morbidity). The costs of controls to reduce non-Hg HAP would be far greater. (See 70 FR 25201 for a discussion of the cost of scrubbers.) We request comment on these analysis, calculations, and conclusions.

b. EPA's Selection of 2020 as the Date for Measuring the Remaining Emissions. Some petitioners argue that EPA should not have based its decisions regarding hazards to public health based on emissions as of 2020; rather, EPA should have looked at earlier dates that tracked those that would apply if a CAA section 112(d) standard were promulgated, followed by a residual risk review under CAA section 112(f).

For the reasons stated in the final Section 112(n) Revision Rule, EPA continues to believe that it must look at what emissions from Utility Units will be after imposition of the requirements of the CAA, here CAIR, and independently CAMR, when determining whether it would be appropriate and necessary to regulate Utility Units under CAA section 112. Thus, it was reasonable for EPA to look at what Utility Unit Hg emissions were predicted to be after imposition of CAIR, and, independently, CAMR. Nonetheless, after the Section 112(n) Revision Rule was finalized, EPA modeled scenarios for the years 2010, 2015, and 2020 that included the CAIR, CAMR, and Clean Air Visibility Rule (CAVR) programs. For the reasons set forth below and in section 10 of the Reconsideration TSD, we believe this modeling supports our position that the expected Hg deposition with CAIR plus CAMR in 2015 is expected to be similar to the Hg deposition with CAIR plus CAMR in 2020. (See Modeling TSD, section V.B.) EPA takes comment on our tentative conclusion that the modeling shows that most of the reductions from CAIR will be achieved by 2010. Moreover, as we noted in the final Section 112(n) Revision Rule, CAIR targets the form of Hg of the greatest importance for local and regional deposition purposes (i.e., ionic or oxidized Hg, also know as reactive gaseous Hg (RGM)). (See 70 FR 16011, n.37). As noted in section II of the Modeling TSD, Hg reductions associated with CAIR co-control result in a 62 percent reduction in RGM by 2020. However, because of the 2010 Phase I CAIR cap, most of these reductions in RGM are expected to occur by that time. Reductions related to CAMR, on the other hand, lead to proportionately more reductions in elemental Hg because of the reliance on Hg-specific controls for the 2018 cap.

First, CAVR indicates that States that opt into the CAIR trading program can satisfy CAVR without imposing further requirements on eligible utility sources. (See 70 FR 39137 and 40 CFR 51.308(e)(4).) Therefore, in the CAIR States, it is reasonable to presume that there would be no further reductions in utility Hg emissions from CAVR. Thus, in these States, it is reasonable to presume that the modeled CAIR/CAMR/CAVR reductions in Hg emissions are a fair representation of CAIR/CAMR Hg reductions.

Second, the most readily depositable Hg emissions are RGM emissions. As discussed in the Reconsideration TSD, the CAIR/CAMR/CAVR runs show a significant drop in modeled utility RGM emissions of almost 11 tons between 2001 (20.6 tons) and 2010 (9.7 tons) (primarily, as noted above, as a result of the co-control effected by the CAIR Phase I cap). Much smaller reductions occur between 2010 and 2015 (2.5 tons), and even smaller reductions between 2015 and 2020 (1.1 tons) (because of the large reductions in RGM emissions already effected and because of the increased reliance on the CAMR Hg-specific controls for the 2018 Phase II cap). Additionally, there is a similarly

significant drop in the modeled utility-attributable Hg deposition from 2001 to 2010 (because of the large reductions in RGM), and very small changes in the utility-attributable Hg deposition from 2010 to 2015 and from 2015 to 2020 (because of the increased reliance on Hg-specific controls to meet the 2018 Phase II CAMR cap, which results in increased reductions in elemental Hg emissions—a form that does not readily deposit). Finally, we would expect that, in accordance with our assumptions in the MMaps model for purposes of this rulemaking, reductions in utility-attributable MeHg levels in fish tissue by 2010 and 2015 would parallel the reductions in utility-attributable Hg deposition by those years.

We ask for comment on EPA's position that the above-noted modeling results are a fair indicator or representation of the levels of utility-attributable Hg emissions and deposition that one could reasonably anticipate in the CAIR States in 2010 and 2015 for CAIR/CAMR.

D. EPA's Decision Related to Nickel (Ni) Emissions From Oil-Fired Utility Units

In the final rule, EPA determined that it is neither appropriate nor necessary to regulate oil-fired units on the basis of nickel (Ni) emissions. In support of that finding, EPA explained that it was ''not appropriate to regulate oil-fired Utility Units under CAA section 112 because we do not anticipate that the remaining level of utility Ni emissions will result in hazards to public health'' (70 FR 16008).

Petitioners contend that EPA did not quantify the cancer risk resulting from the changed fuel mixes at oil-fired units, and did not establish that the changes in fuel mix upon which EPA relied in making its determination are permanent and enforceable.

We are granting reconsideration of the Agency's conclusion that it is not appropriate or necessary to regulate oil-fired units under CAA section 112 on the basis of Ni emissions. (See section IV.B.1 of the final Section 112(n) Revision Rule.) EPA is particularly interested in information related to the primary factors supporting its decision not to regulate Ni emissions from oil-fired Utility Units under CAA section 112, including those it identified in the final Section 112(n) Revision Rule. Those factors are: (1) The low level of risk presented by Ni emissions from oil-fired Utility Units as documented in the Report to Congress; (2) uncertainty regarding the health impacts of Ni emissions from oil-fired Utility Units; (3) the trend toward a reduction in the utilization of oil for electric power generation; and, (4) the fact that EPA is aware of no information regarding the health impacts of Ni emissions from the plants located in Hawaii that would justify regulating those units, much less the entire class of oil-fired Utility Units, under CAA section 112.

In summary, EPA is specifically seeking the following:

(1) Information indicating that the trend away from the use of oil in the generation of electricity will not be maintained.

(2) Information indicating that there are oil-fired power plants other than the 11 plants identified in the Report to Congress and considered in the December 2000 finding with estimated risk values greater than 1×10^{-6}.

(3) Specific information indicating that any of the 11 identified plants pose a greater risk than EPA has considered to date.

E. Documents Identified by Petitioners That Are Dated After the Close of the Public Comment Period

Petitioners also identify certain documents that are dated after the close of the public comment period, which they believe are of central relevance to the final Section 112(n) Revision Rule. In particular, petitioners argue that the documents are relevant to EPA's determination that the levels of utility-attributable Hg remaining after the implementation of CAIR, and independently after CAMR, are not reasonably anticipated to result in hazards to public health. As explained above, EPA is granting reconsideration on section VI of the final Section 112(n) Revision Rule, which sets forth EPA's methodologies and its conclusion that after implementation of CAIR, and independently CAMR, utility-attributable Hg emissions are not reasonably anticipated to result in hazards to public health. During the public comment period for this notice, petitioners and any other commenters may submit any documents that they believe are relevant to section VI of the final Section 112(n) Revision Rule or to any other issue on which we are granting reconsideration today, including the documents cited by petitioners. We will consider any such documents and any other new information at the same time we consider all significant comments received during the comment period on the reconsideration issues.

We do note, however, that one of the documents cited by petitioners is a study submitted by the Northeast States for Coordinated Air Use Management (NESCAUM) entitled, ''Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-fired Power Plants'' (February 22, 2005; OAR–2002–0056–5749, OAR–2002–0056–5752). After issuance of the final Section 112(n) Revision Rule, EPA did address this study publicly in response to an inquiry from Senators Leahy, Jeffords, Boxer, and Kerry that we received. We set forth our position on that study in an April 5, 2005 reply to them and have included this response in the Reconsideration TSD (and in the docket). Please refer to that discussion in the Reconsideration TSD in formulating any comments on the issues relevant to this reconsideration notice.

V. Clarification and Correction of Statements Made in Final Section 112(n) Revision Rule

In addition to commencing a reconsideration proceeding on the above issues, EPA by this notice is also clarifying or correcting some statements made in the final Section 112(n) Revision Rule. The clarifications and corrections can be categorized generally as follows: (a) Clarification of confusing explanatory text and (b) correction of incorrect factual statements. Below, we identify each clarification or correction to the explanatory text at 70 FR 15994 and provide a brief explanation for the revised language.

(1) On page 16024, column 3, in the last full paragraph, after the second sentence, change the first sentence to read as follows: ''Applying the risk factors identified above to utility Hg emissions in the 112(n)(1)(A) context, EPA concludes that utility Hg emissions remaining after implementation of CAIR, and even more so after CAMR, are not reasonably anticipated to result in hazards to public health.''

We are revising this sentence because the original sentence (''* * * unacceptable hazards to public health * * *'') in the preamble to the final Section 112(n) Revision Rule is inconsistent with the wording of CAA section 112(n)(1)(A), which is the standard that EPA applies when making its final decision.

(2) On page 16022 in column 1, last paragraph, and in column 3, first paragraph, and on page 16024 in column 2, second full paragraph, EPA indicates that data from a study by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) on fish consumption rates by Ojibwa Great Lakes tribes had not been peer reviewed. However, we have subsequently learned that this is a peer-reviewed study. We, nevertheless, continue to believe that there are reasons for not using the Ojibwa study.

Two reasons for not using the Ojibwa study not related to the peer review status of the study were cited in the final rule. Specifically, commenters did not include information on annual average consumption rates or the percentage of those fish consumers that are women of childbearing age and, based on EPA's information, the Tribes do not reside in an area that appears to be significantly impacted by utility Hg emissions. Thus, despite having extremely high consumption rates, there are no data in the record that suggest that members of the Tribe would be exposed above the RfD (above an IDI value of 1) as a result of utility-attributable emissions. (See 70 FR 16012 and 70 FR 16021 for a discussion of the RfD and the IDI, respectively.) Moreover, EPA notes that (a) the study does not clearly identify the population percentile that the data represent (i.e., what fraction of fishers is represented by the various consumption rates given), and without this information, we can not know whether the information is relevant for a 90th percentile, 95th percentile, 99th percentile, or max value; (b) the study covers individuals not residing in the most impacted portions of our study area, therefore, using a more generalized and broadly representative estimate such as EPA's recommended subsistence fisher rate, is a better approach; and (c) the data are seasonal, therefore, one cannot necessarily translate the date into annual-averaged values (i.e., what is consumption during periods other than the high-consuming fishing seasons).

In addition, EPA, in the Effectiveness TSD, did evaluate a 99th percentile subsistence fisher consumption rate that was 295 grams per day (g/day) (this value was based on the EPA mean and a 95th percentile subsistence fisher consumption rate of 60 and 170 g/day, respectively; we fitted a log-normal distribution and took the 99th percentile from this). This 295 g/day value is at the high end of the values provided in the Ojibwa study; therefore, EPA did use a consumption value that was at the high end of the values presented in the GLIFWC study.

VI. Statutory and Executive Order (EO) Reviews

A. EO 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the EO. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO.

Pursuant to the terms of EO 12866, OMB has notified us that it considers this a ''significant regulatory action'' within the meaning of the EO. We have submitted this reconsideration notice to OMB for review. However, EPA determined that the final Section 112(n) Revision Rule would not have a significant economic impact. Similarly, today's notice of reconsideration does not have a significant economic impact. Changes made in response to OMB suggestions or recommendations will be documented in the public record. All written comments from OMB to EPA and any written EPA response to any of those comments are included in the docket listed at the beginning of this notice under **ADDRESSES**.

B. Paperwork Reduction Act

The final Section 112(n) Revision Rule did not contain any information collection requirements and therefore was not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA). Similarly, this action does not contain any information collection requirements and, therefore, is not subject to the PRA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We certify that this notice of reconsideration will not have a significant economic impact on a substantial number of small entities because it imposes no regulatory requirements. We continue to be interested in the potential impacts of the Section 112(n) Revision Rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

We determined that the final Section 112(n) Revision Rule did not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final Section 112(n) Revision Rule was not subject to the requirements of UMRA sections 202 and 205. In addition, we determined that the final Section 112(n) Revision Rule contained no regulatory

requirements that might significantly or uniquely affect small governments because it contained no regulatory requirements that apply to such governments or imposed obligations upon them. Therefore, the final Section 112(n) Revision Rule was not subject to the requirements of UMRA section 203. Today's notice of reconsideration changes none of the regulatory requirements of the final Section 112(n) Revision Rule and, thus, is also not subject to the requirements of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255; August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final Section 112(n) Revision Rule did not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, today's notice does not impose any additional requirements. Thus, Executive Order 13132 did not apply to the final Section 112(n) Revision Rule.

For the same reasons, today's notice of reconsideration does not have federalism implications. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249; November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the EO to include regulations that have ''substantial direct effects 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.''

The final Section 112(n) Revision Rule did not have Tribal implications as defined by Executive Order 13175. It did not have a substantial direct effect on one or more Indian Tribes, in that it was a determination not to regulate power plants under CAA section 112, and, therefore, imposed no burden on tribes. Furthermore, the final Section 112(n) Revision Rule did not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in implementing the CAA. Because the final Section 112(n) Revision Rule did not have Tribal implications, Executive Order 13175 did not apply. Furthermore, this notice of reconsideration does not impose any additional requirements and, thus, is also not subject to Executive Order 13175.

Although we have determined that the final Section 112(n) Revision Rule and this notice are not subject to Executive Order 13175, we recognize that Tribes have expressed concern about the rule's impact upon human health and the environment in Indian Country and the scope of EPA's consultation with Tribes on these issues. In recognition of these concerns and EPA's trust responsibility to Tribes, and because this reconsideration includes additional scientific and technical analysis, such as on fish consumption levels by Tribes and the extent of the impact of utility-attributable Hg on fish tissue, EPA is considering outreach strategies to further explain our findings to Tribes beyond this notification and the requirements of Executive Order 13175.

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

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The final Section 112(n) Revision Rule was not subject to Executive Order 13045 because it was not an economically significant regulatory action as defined by EO 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulations. The final Section 112(n) Revision Rule was not subject to Executive Order 13045 because it did not include regulatory requirements based on health or safety risks. This notice of reconsideration imposes no requirements and, thus, also is not subject to Executive Order 13045.

Nonetheless, in making its determination as to whether it is ''appropriate and necessary'' to regulate utility units under CAA section 112, EPA considered the effects of utility HAP emissions on both the general population and sensitive subpopulations, including children.

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

Executive Order 13211 (66 FR 28355; May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking: (1)(i) That is a significant regulatory action under EO 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a ''significant energy action.'' Although the final Section 112(n) Revision Rule was determined to be a significant regulatory action under Executive Order 12866, it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable

law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

The final Section 112(n) Revision Rule did not involve technical standards and, therefore, the NTTAA did not apply. Similarly, this notice of reconsideration does not involve technical standards and, therefore, the NTTAA does not apply.

Dated: October 21, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–21456 Filed 10–27–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0056; FRL–7989–2]

RIN 2060–AN50

Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On May 18, 2005, pursuant to section 111 of the Clean Air Act (CAA), EPA published a final rule, entitled ''Standards of Performance for New and Existing Stationary Sources: Electric Steam Generating Units'' (the Clean Air Mercury Rule or CAMR; see 70 FR 28606). The final rule establishes standards of performance for emissions of mercury (Hg) from new and existing coal-fired electric utility steam generating units (Utility Units or EGU).

After the notice of final rule appeared in the **Federal Register**, the Administrator received four petitions for reconsideration of certain aspects of CAMR. In this notice, EPA is announcing reconsideration of specific issues in CAMR, and we are requesting comment on those issues.

We are seeking comment only on the aspects of CAMR specifically identified in this notice. We will not respond to any comments addressing other provisions of CAMR or any related rulemakings.

DATES: *Comments.* Comments must be received on or before December 19, 2005. Because of the need to resolve the issues raised in this notice in a timely manner, EPA will not grant requests for extensions beyond this date.

Public Hearing. A public hearing will be held on November 17, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by ''Docket ID No. OAR–2002–0056 (Legacy Docket ID No. A–92–55),'' by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/edkpub/index.jsp.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2002–0056 (Legacy Docket ID No. A–92–55). 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://www.epa.gov/edkpub/index.jsp*, 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.

Public Hearing. The public hearing will run from 8 a.m. to 5 p.m., Eastern time, and will be held in Room 111C at the EPA facility, Research Triangle Park, NC. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice. If no one contacts Ms. Garrett in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edkpub/index.jsp.* 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 copy righted 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 and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Contact Mr. William Maxwell, Combustion Group, Emission Standards Division, Mail Code: C439–01, U.S.

EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5430; fax number: (919) 541–5450; e-mail address: *maxwell.bill@epa.gov.* For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mail Code: C439–01, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; fax number: (919) 541–5450; e-mail address: *garrett.pamela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information presented in this preamble is organized as follows:

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I. National Technology Transfer and Advancement Act

I. General Information

A. Does this reconsideration notice apply to me?

Categories and entities potentially affected by today's notice include:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/Tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by today's notice. This table lists examples of the types of entities EPA is now aware could potentially be regulated by today's notice. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by today's notice, you should examine the applicability criteria in 40 CFR 60.45Da of the final new source performance standards (NSPS) amendments. If you have questions regarding the applicability of today's notice to a particular entity, consult Mr. William Maxwell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How do I submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

The Administrator signed CAMR on March 15, 2005, and the final rule was published in the **Federal Register** on May 18, 2005. (See 70 FR 28606.) CAMR is based on a notice of proposed rulemaking (NPR) dated January 30, 2004 (69 FR 4652), wherein EPA proposed two alternative regulatory approaches. Under the first approach, EPA would retain its December 2000 ''appropriate and necessary'' finding and the associated CAA section 112(c) listing of Utility Units and issue final emission standards under CAA section 112(d). Under the second approach, EPA would revise its December 2000 ''appropriate and necessary'' finding, remove Utility Units from the CAA section 112(c) list, and issue final standards of performance under CAA section 111.

On March 15, 2005, EPA finalized the second regulatory approach. Specifically, the EPA Administrator signed a final action that revised the December 2000 appropriate and necessary finding and concluded that it is not appropriate or necessary to regulate coal- and oil-fired Utility Units under CAA section 112. (See 70 FR 15994; March 29, 2005.) EPA took this final action because it believed that the December 2000 finding lacked foundation and because recent information demonstrated that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based solely on the revised finding, EPA removed coal- and oil-fired Utility Units from the CAA section 112(c) list. (See 70 FR 15994.)

In CAMR, EPA established NSPS for Hg emissions from new affected coal-fired Utility Units pursuant to CAA section 111(b). EPA also created a market-based cap-and-trade program pursuant to CAA section 111(d) that will reduce nationwide utility emissions of Hg from existing units in two distinct phases. Under this provision of CAMR, States undergo a process similar to that outlined in State Implementation Plans (SIP), whereby they detail in a plan submitted to EPA how they will meet their EPA-established State electric generating unit Hg budgets under both Phase I and Phase II.

Following promulgation of the final rule, the Administrator received four petitions for reconsideration pursuant to CAA section 307(d)(7)(B).[1] The purpose of today's notice is to initiate a process for responding to certain issues raised in these petitions.[2]

III. Today's Action

Today, we are granting reconsideration of, and requesting comment on, certain issues raised in the four petitions for reconsideration. Generally, the petitioners claim that CAMR contains information that is of central relevance to the final rule but that was not sufficiently reflected in the proposed rule. The petitioners, therefore, contend that they did not have an adequate opportunity to provide input on these matters during the designated public comment period.

There is a high degree of public interest in CAMR and the public had three separate opportunities to submit comments on whatever matters they deemed relevant to the rulemaking, following the January 30, 2004 NPR, the March 16, 2004 Supplemental Notice of Proposed Rulemaking (SNPR), and the December 1, 2004 Notice of Data Availability (NODA). EPA received, reviewed, and responded to tens of thousands of comments. Thus, a robust public discussion of CAMR has already occurred. Nonetheless, in the interest of ensuring that interested persons have an ample opportunity to comment on all meaningful aspects of this important rule, we are granting reconsideration on certain issues and asking the public for additional comment on those issues. The issues for which we are granting reconsideration at this time, and for which we are soliciting comment are discussed below.

Our final decision on reconsideration of all the issues for which we are not granting reconsideration today will be issued no later than the date by which we take final action on the issues discussed in today's action.

IV. Discussion of Issues Subject to Reconsideration

A. 2010 Phase I Statewide Hg Emission Budgets and the Unit-Level Hg Emission Allocations on Which Those Budgets Are Based

Petitioners state that the Phase I Hg budgets and allocations appeared for the first time in the final CAMR, making it impracticable to raise objections during the period provided for public comment. Although, as noted below, EPA believes that it adequately noticed both its general intent with regard to the Hg budget and allocation approach and the specifics of the calculation procedure, we are at this time opening for public comment the methodology for determining the Phase I State Hg budgets and the unit-specific allocations on which those budgets are based.

In the NPR, EPA provided notice of the formula for determining State EGU Hg budgets. Although this formula was only applied in deriving the 2018 budgets at that time, the intent to make this formula applicable to the first-phase State EGU Hg budgets was expressed specifically in the March 16, 2004 SNPR (69 FR 12398), where EPA stated (69 FR 12406) ''The January 30, 2004 NPR proposed a formula for determining the total amount of emissions for the Budget Trading Program within a specific State for 2010, and, using that same mechanism, proposed the amount of emissions for the Program within each State for 2018. That formula is, in essence, the sum of the hypothetical allocations to each affected Utility Unit in the State * * *'' EPA then proceeded to outline the process for developing the hypothetical unit allocations using baseline heat input and the development of the baseline heat input adjustment factors used in those calculations. Hypothetical unit Hg allocations for 2018 using the same methodology that EPA indicated it would apply for 2010, are included in Appendix B to the preamble to the SNPR (69 FR 12421).

Nevertheless, as stated above, at this time, EPA is soliciting comments on both the individual State EGU Hg budgets and the unit-specific allocations on which those budgets are based.

B. Definition of ''Designated Pollutant'' Under 40 CFR 60.21

Petitioners claim that they did not have an opportunity to comment on EPA's proposed revision of the term ''designated pollutant'' in 40 CFR 60.21. As explained in the NPR, both the House of Representatives and Senate amended CAA section 111(d) in 1990 and both amendments were enacted into law. In the NPR, EPA interpreted the two different amendments to section 111(d) and solicited comment on its interpretation. EPA then finalized its interpretation of the conflicting House of Representatives and Senate amendments to CAA section 111(d) on March 15, 2005. EPA's interpretation is set forth, in full, in the final action revising EPA's December 2000 appropriate and necessary finding and removing Utility Units from the CAA section 112(c) list (see 70 FR 15994; the Section 112(n) Revision Rule). EPA incorporated its interpretation of section 111(d) into CAMR by reference to the final Section 112(n) Revision Rule.

EPA also explained in CAMR that it was revising the term ''designated pollutant'' at 40 CFR 60.21 because that definition was promulgated in 1975 and interpreted the 1970 CAA, not the 1990 Act. The revisions to the term ''designated pollutant'' in the final CAMR reflect EPA's interpretation of the conflicting amendments to CAA section 111(d) enacted in 1990, which EPA both proposed and finalized. However, because EPA did not seek specific comment on the regulatory change and whether that change is consistent with its interpretation of CAA section 111(d), as described in the final Section 112(n) Revision Rule, EPA is requesting comment on the regulatory definition of ''designated pollutant'' contained in the final CAMR.

C. EPA's Subcategorization for Subbituminous Coal-fired Units in the Context of the New Source Performance Standards (NSPS)

Petitioners assert that the use of the type of control device as a basis for subcategorization is arbitrary and capricious and relies on factors not intended by Congress.

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[1] One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The second petition was submitted by five environmental groups: The Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), and the Natural Resources Council of Maine. The third petition was submitted by the Jamestown Board of Public Utilities. The fourth petition was submitted by the Integrated Waste Service Association (IWSA).

[2] In a letter dated August 19, 2005, we informed the petitioners that we intended to initiate a reconsideration process for at least one issue raised in the petitions. We indicated that we would provide particulars in a subsequent **Federal Register** notice. This is that notice. Also in that August 19, 2005 letter, we denied the petitioners request that we administratively stay the CAMR under CAA section 307(d)(7)(B).

In the NPR (January 30, 2004; 69 FR 4652), EPA proposed to subcategorize on the basis of the four coal types. (EPA also proposed to establish a fifth subcategory for integrated gasification combined cycle (IGCC) units.) We did not propose any subcategorization based on the type of control device employed. In the final CAMR, we established subcategories for subbituminous coal-fired units that appear to be based on the type of pollution control device used for sulfur dioxide (SO_2) control (i.e., wet or dry flue gas desulfurization (FGD) system). It was not our intent, however, to subcategorize on the basis of control technology. Rather, our intent was to recognize that new units located in some areas will have access to an adequate supply of water while units in other areas will not have such access. Where adequate water is available, we believe, as stated in the preamble to CAMR, that wet FGD represents best demonstrated technology (BDT). We also believe, however, that where adequate water is not available, dry FGD represents BDT. The two subcategories of subbituminous units thus reflect our recognition of the impact of not having adequate water available, not our intent to subcategorize on the basis of control technology. In order to make this fact clear, we are proposing in today's notice to specify that where an adequate water supply is available (i.e., in areas receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on U.S. Department of Agriculture 30-year data), new subbituminous coal-fired units must meet an emission limit based on the use of a wet FGD. Only in situations where an adequate water supply is not available (i.e., in areas receiving less than or equal to 25 in/yr mean annual precipitation, based on U.S. Department of Agriculture 30-year data) may new subbituminous coal-fired units meet an emission limit based on the use of dry FGD.

As noted in the preamble for CAMR, we took the position that BDT could be different for new subbituminous coal-fired units located in certain areas because of concerns about the availability of water for Utility Units located in areas of limited mean annual precipitation. Such units could face potential water restrictions, a nonair quality environmental impact consideration. Such units are generally located in the Western part of the U.S. and, thus, generally burn subbituminous coal. A review of the permits available at promulgation of CAMR (OAR–2002–0056–6192) indicates that all subbituminous coal-fired units located in the Western portion of the U.S. are planning on utilizing dry FGD systems. We recognize that some existing subbituminous coal-fired units located in the Western portion of the U.S. currently utilize wet FGD systems. However, with the growth in population in this region, EPA believes that the possibility exists that such units would have their water availability curtailed through local or State water conservation actions (e.g., to make more water available for agricultural or residential uses during periods of drought), and, thus, limit their operational status.

EPA does not think it appropriate public policy to preclude use of this coal type on a regional basis strictly because a new unit may not be able to acquire the water necessary to operate a wet FGD system (which requires more water than does a dry FGD system). Because CAA section 111(b)(2) authorizes EPA to distinguish between classes, types and sizes within categories of new sources for purposes of establishing standards, we believe that the above proposed subcategorization is appropriate. We further believe that the availability of water is a nonair quality environmental impact within the provisions of CAA section 111 and, thus, is an appropriate consideration in this case.

EPA is proposing to revise its basis for the subcategorization of subbituminous coal-fired units. We are proposing that any new unit locating in an area with a mean annual precipitation of less than or equal to 25 in/yr, based on U.S. Department of Agriculture 30-year data, have an emission limit of 97×10^{-6} pounds per megawatt-hour (lb/MWh) while any new unit locating in an area with a mean annual precipitation greater than 25 in/yr have an emission limit of 66×10^{-6} lb/MWh. EPA is soliciting comment on this expanded definition of its basis for the subcategorization of subbituminous coal-fired units.

D. Statistical Analysis Used for the NSPS

Petitioners contend that EPA's reanalysis and revision of the NSPS limits was not subject to public review or comment. The petitioners further contend that EPA applied an inappropriate statistical analysis in establishing the level of the NSPS and that the statistical analysis contains numerical inconsistencies and arithmetic errors.

As with any NSPS analysis, EPA evaluated the controls that effect the best emission reduction of the pollutant in question (in this case, Hg). NSPS are based on the ''best system of emission reduction'' (CAA section 111) rather than on only the ''most efficient units'' as put forward by the petitioners or on the best-performing units as required under CAA section 112. EPA determined the ''best system'' for each subcategory and then developed the NSPS. Similarly, EPA used data from all units utilizing the ''best system'' in its evaluation of the NSPS absent any information that a particular unit was not operating their emission controls appropriately.

Consistent with the development of other NSPS, EPA used statistical analysis of the data to account for the natural variability in Hg content in coals and as one measure to account for cost in the NSPS (i.e., many coal-fired Utility Units may switch coal sources, within the same coal rank, based on cost; therefore, the analysis included the highest average content of Hg potentially available).

Although, EPA believes that analysis by subcategory is appropriate for Hg at this time, it has reviewed its analysis and agrees that the analysis used for CAMR contains certain inconsistencies and errors. Therefore, EPA has reanalyzed the data and revised its NSPS analysis. This revised analysis is provided in the docket and is summarized below.

For each coal type, information collection request (ICR) emission test data (ICR–3) were reviewed to identify the units that were using technologies which were most effective at capturing Hg from coal-fired power plants (i.e., BDT). The technologies that appeared most effective in reducing Hg emissions were those that were installed, or likely would be installed, to comply with the current NSPS standards for particulate matter and SO_2. This combination of controls was most effective in reducing Hg emissions and, thus, is considered BDT. For bituminous coal-fired boilers, BDT is considered to be the combination of a fabric filter (FF) and an FGD system. The FGD may be either a wet scrubber system (wet FGD) or a spray dryer absorber (SDA; dry FGD). Of the 27 bituminous coal-fired units listed in ICR–3, 6 units had a combination of a FF and a FGD. For subbituminous coal-fired units, BDT was determined to be dependent on water availability as noted above. For new subbituminous coal-fired units that are located where an adequate water supply is not available, BDT is considered to be a dry FGD system (i.e., a combination of a FF with a SDA). For new subbituminous coal-fired units that are located where an adequate water supply is available, BDT is considered to be a wet FGD system. Of the 27 subbituminous coal-

fired units listed in ICR–3, 2 units have controls representing BDT for the ''wet'' subbituminous subcategory and 4 units have controls representing BDT for the ''dry'' subbituminous subcategory. For lignite coal-fired units, BDT is considered to be either an FF/SDA system, a fluidized bed combustor (FBC) with an electrostatic precipitator (ESP), or an ESP with a wet FGD system. Of the 12 lignite coal-fired units listed in ICR–3, 7 units have controls representing BDT. The ICR–3 contains data on only two units firing coal refuse. Both were FBC units equipped with FF. Both have reported Hg control efficiency of greater than 99 percent. Therefore, BDT for coal refuse-fired units is considered to be a FBC with FF. One unit fired waste anthracite, the other fired waste bituminous.

To determine the appropriate achievable Hg emission level for each coal type that reflects BDT, a statistical analysis was conducted to determine the appropriate control efficiency achieved by BDT. That is, we determined the 90th percentile Hg reduction efficiency achievable for a source using BDT (i.e., the control efficiency which BDT is estimated to achieve 90 percent of the time) using the one-sided t-statistics test. The control efficiency used was the greater of that achieved either from the coal-to-the-stack or across the control device as shown through the ICR–3 3-run averages. This approach was used to minimize the impact of ''negative'' control removals indicated by some of the test results. It is recognized that Hg cannot be generated within a utility boiler/control system and that any negative removals merely indicate that no control is being shown. However, it is also believed that most of the Hg control achieved is being achieved by the last control device (the one tested during the ICR program) and that little Hg is removed in the boiler. Therefore, it is believed that use of the highest control adequately reflects performance of the entire system. Further, as negative reductions are not realistic, any negative reductions found were equated to zero.

Based on this reanalysis of the appropriate NSPS emission limits, EPA is today proposing the following revised Hg limits:

Bituminous coal: 20×10^{-6} lb/MWh
Subbituminous coal (wet units): 66×10^{-6} lb/MWh
Subbituminous coal (dry units): 97×10^{-6} lb/MWh
Lignite coal: 175×10^{-6} lb/MWh
Coal refuse: 1.0×10^{-6} lb/MWh

Although EPA has reanalyzed the available data and revised the NSPS Hg emission limits, as noted in the final CAMR, we continue to believe that these limits are of short-term value only. That is, the CAMR Hg cap will be a greater long-term factor in constraining Hg emissions from new coal-fired Utility Units than will the NSPS emission limits. In addition, the new source review (NSR) provisions provide an additional constraint on new-source emissions, further diminishing the importance of the revised NSPS Hg emission limits. Essentially, the NSPS limits become a ''backstop'' for the trading program and other NSR requirements.

EPA seeks comment on this statistical approach.

E. Hg Content in Coal Used To Derive the NSPS

Petitioners contend that EPA arbitrarily applied its statistical analysis to coal containing the highest annual average content of Hg, an approach which does not encourage the use of the cleanest fuels. Further, they contend that insufficient notice of this approach was afforded the public.

Many coal-fired Utility Units may switch coal sources, within the same coal rank, based on spot-market availability and cost. Therefore, the analysis was based on a reasonable maximum Hg content in coal (represented by the 90th percentile of measured Hg concentrations in coal) as a means of complying with previous Court decisions that mandate that an NSPS must be achievable by all new units to which it will apply over the full range of operating conditions which can reasonably be anticipated to occur.

EPA is taking comment on this approach.

F. Definition of Covered Units as Including Municipal Waste Combustors (MWC)

Petitioners claim that CAMR inappropriately extends the definition of covered units to include MWC[3] and that EPA gave no notice that it intended to include MWC units under CAMR, thereby depriving interested parties of the opportunity to provide comment. Further, petitioners contend that EPA should conclude that as a source category, MWC units are already well regulated under CAA sections 129 and 111 and, therefore, should not be included under CAMR.

EPA did not intend for MWC units subject to NSPS and emission guidelines, as implemented through approved State plans or an applicable Federal plan, to be subject to CAMR, either directly or through a State or Federal plan implementing the CAA section 111(d) guidelines for existing units, even if such units combust certain amounts of coal and, thus, fall under the current definition of ''coal-fired.'' EPA is, therefore, granting reconsideration on the issue of the definition of an ''Electric generating unit or EGU'' in 40 CFR 60.24(h) as it relates to MWC units and is taking comment on that issue. EPA is taking this action because it did not specifically indicate that it intended such units to be excluded from the model trading program, approved State plans, and any subsequently adopted Federal plan under CAMR.

In this proposed rulemaking, EPA is proposing to clarify the definition of ''Electric generating unit or EGU'' to specifically exclude MWC units subject to an applicable NSPS, an EPA-approved State plan, or an applicable Federal plan. The proposed revised definition would establish a specific exemption for MWC. EPA has only included specific changes to the definition of ''Electric generating unit or EGU'' as it appears in 40 CFR 60.24(h) necessary to establish the exemption in this proposed rule. EPA is, however, also proposing to make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h).

G. Definition of Covered Units as Including Some Industrial Boilers

Petitioners contend that CAMR, as written, would subject certain units to regulation under both CAMR and the CAA section 112 Industrial Commercial Institutional Steam Generating Unit Maximum Achievable Control Technology (MACT) standards (the Boiler MACT). Petitioners also claim that EPA changed the applicability definition in the final CAMR to include units that had ever been connected to a generator having a capacity greater than 25 megawatts electric (MWe) and, thus, provided no opportunity for public comment on this definition.

EPA did not intend for any units subject to the Boiler MACT to also be subject to CAMR. EPA proposes to address this problem in two ways. First, EPA is in the process of preparing proposed revisions to the Boiler MACT in response to a petition for reconsideration of that rule. One of the proposed revisions will be to specifically exclude units subject to

[3] An MWC is a ''solid waste incineration unit'' as defined in CAA section 129(g)(1) combusting ''municipal waste'' as defined in CAA section 129(g)(5).

CAMR from regulation under the Boiler MACT. Second, EPA is today proposing to revise the definition of ''Electric generating unit or EGU'' in 40 CFR 60.24(h) to include only stationary, coal-fired boilers or stationary, coal-fired combustion turbines serving, at any time after November 15, 1990, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. This date would be consistent with the dates used in the Acid Rain Program and the Clean Air Interstate Rule (CAIR).

In evaluating the changes necessary to respond to the petition, EPA determined that certain other clarifying changes to the definition need to be made with regard to cogeneration units and when they are to be considered ''electric generating units'' under this rule to ensure that the regulatory text unambiguously reflects EPA's intent, as expressed in the CAMR preamble (see 70 FR 28612, 28625), regarding cogeneration units. EPA is today proposing to make those changes in 40 CFR 60.24(h).

EPA is also proposing to make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h).

V. Issues Not Corrected in the CAMR Technical Corrections Federal Register Notice

On August 30, 2005 (70 FR 51266), EPA issued a technical corrections notice addressing certain corrections to the May 18, 2005 (70 FR 28606) CAMR. We have subsequently found certain other errors in CAMR that need correction. We believe that all of these corrections are non-controversial.

This notice corrects the following errors. First, it has been brought to our attention that we were inconsistent in the use of ''new, modified, and reconstructed'' in the applicability provisions of the NSPS portion of CAMR. We propose to correct this inconsistency by revising the language to indicate that the NSPS applies to units which are constructed, modified, or reconstructed after January 30, 2004. Second, an inconsistency between the definitions of ''coal'' and ''coal-fired electric utility steam generating unit'' has been brought to our attention. In defining ''coal'' we indicate that ''coal'' includes ''petroleum coke'' while in defining ''coal-fired electric utility steam generating unit'' we identify ''petroleum coke'' as an example of a supplemental fuel (i.e., a fuel that is burned with coal). We propose to correct this inconsistency by removing ''petroleum coke'' from the definition of ''coal'' as we do not think ''petroleum coke'' is properly classified as ''coal.'' Third, because of the delay between signature and publication of CAMR, the submittal dates for the individual State Hg allocation plans and the full State plans are not consistent. We propose to resolve this problem by changing the October 31, 2006 date for submitting Hg allowance allocations to the Administrator specified in 40 CFR 60.24(h)(6)(ii)(C) and 40 CFR 60.4141(a) of the model trading rule to November 17, 2006, consistent with the date for submitting State plans specified in 40 CFR 60.24(h)(2). Finally, we have identified additional instances where the section renumbering, noted in the August 30, 2005 notice, was not corrected, and we are proposing to correct these.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's notice of reconsideration is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (Information Collection Request No. 2137.02; OMB Number 2060–0567). The information collection requirements are not enforceable until OMB approves them.

Today's notice of reconsideration imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the notice of reconsideration, the information collection request (ICR) has not been revised.

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; 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 the 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice of reconsideration on small entities, a small entity is defined as: (1) A small business that is identified by the NAICS Code, as defined by the

Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Categories and entities potentially regulated by the final rule with applicable NAICS codes are provided in the Supplementary Information section of this action.

According to the SBA size standards for NAICS code 221122 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million MWh.

After considering the economic impacts of today's notice of reconsideration on small entities, we certify that the notice will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice of reconsideration imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule projected that in 2020, 2 years into the start of the second phase of the cap-and-trade program, compliance costs to government-owned entities would be approximately $48 million, today's notice of reconsideration does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice of reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to UMRA section 203.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects 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.''

Today's notice of reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's notice of reconsideration.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's notice is a notice of reconsideration of the final CAMR, which is subject to the Executive Order

because it is economically significant as defined by Executive Order 12866, and we believe that the environmental health or safety risk addressed by that action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of that final rule on children. The results of the evaluation are discussed in that final rule (70 FR 28606; May 18, 2005) and are contained in the docket (OAR–2002–0056).

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

Today's notice of reconsideration is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (70 FR 16034; March 29, 2005). Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Incorporation by reference, Intergovernmental relations, Metals, Natural gas, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 72

Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 21, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of the Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

Subpart B—[Amended]

2. Section 60.24 is amended by:

a. In paragraph (h)(6)(ii)(C), revising the words ''October 31, 2006'' to read ''November 17, 2006''; and

b. In paragraph (h)(8), revising the definition of ''Electric generating unit or EGU'' to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(h) * * *

(8) * * *

Electric generating unit or *EGU* means:

(1)(i) Except as provided in paragraphs (2) and (3) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MWe) producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraph (2)(i)(A) of this definition shall not be an electric generating unit:

(i)(A) A unit:

(*1*) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(*2*) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hours (MWh), whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (2)(i)(A) of this definition for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (2)(i)(A)(*2*) of this definition.

(3) A ''solid waste incineration unit'' as defined in Clean Air Act section 129(g)(1) combusting ''municipal waste'' as defined in Clean Air Act section 129(g)(5) shall not be an electric generating unit if it is subject to one of the following rules:

(i) Subpart Eb of part 60 of this chapter, ''Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996'',

(ii) Subpart AAAA of part 60 of this chapter, ''Standards of Performance for Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001'',

(iii) An EPA-approved State plan for implementing subpart Cb of part 60 of this chapter, ''Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed On or Before September 20, 1994'';

(iv) Subpart FFF of part 62 of this chapter, ''Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994'';

(v) An EPA-approved State Plan for implementing subpart BBBB of part 60 of this chapter, ''Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999''; or,

(vi) Subpart JJJ of 40 CFR part 62, ''Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999''.

Subpart Da—[Amended]

3. Section 60.41Da is amended by revising the definitions of ''Coal'' and ''Coal-fired electric utility steam generating unit'' and by revising the existing reference in paragraph (b) of the definition of ''Potential combustion concentration'' from ''§ 60.48a(b)'' to read ''§ 60.50Da(b)'' to read as follows:

§ 60.41Da Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004) ε1 (incorporated by reference, see § 60.17) and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

Coal-fired electric utility steam generating unit means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

* * * * *

4. Section 60.45Da is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(2)(i);

c. Revising paragraph (a)(2)(ii);

d. Revising paragraph (a)(3); and

e. Revising paragraph (a)(4) to read as follows:

§ 60.45Da Standard for mercury.

(a) * * *

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 20×10^{-6} pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 nanograms per joule (ng/J).

(2) * * *

(i) If your unit is located in a geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 66×10^{-6} lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 97×10^{-6} lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 175×10^{-6} lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is 0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of 1.0×10^{-6} lb/MWh or 0.0010 lb/GWh on an output basis. The SI equivalent is 0.00013 ng/J.

* * * * *

5. Section 60.48Da is amended by:

a. Revising the existing reference in paragraph (j) introductory text from ''§ 60.44a(a)'' to read ''§ 60.44Da(a)'';

b. Revising the existing reference in paragraph (j)(2) from ''§ 60.49a'' to read ''§ 60.49Da''; and

c. Revising the second and third sentences in paragraph (l) to read as follows:

§ 60.48Da Compliance provisions.

* * * * *

(l) * * * The owner or operator of an affected facility subject to § 60.45Da (new sources constructed, modified, or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49Da(p) in conjunction with hourly stack gas volumetric flow rates measured according to the provisions of § 60.49Da(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49Da(k). Compliance with the applicable standard under § 60.45Da is determined on a 12-month rolling average basis.

§ 60.49Da [Amended]

6. Section 60.49Da is amended by revising the existing reference in paragraph (c)(2) from ''§ 60.51a'' to read ''§ 60.51Da''.

§ 60.50Da [Amended]

7. Section 60.50Da is amended by:

a. Revising the existing reference in paragraph (e)(2) from ''§ 60.48(d)(1)'' to read ''§ 60.46(d)(1)''; and

b. In paragraph (g), by removing the words ''and 60.46Da''.

Subpart Db—[Amended]

§ 60.40b [Amended]

8. Section 60.40b is amended by revising the existing reference in paragraph (e) from ''§ 60.40a'' to read ''§ 60.40Da''.

Subpart HHHH—[Amended]

9. Section 60.4141 is amended by revising paragraph (a) to read as follows:

§ 60.4141 Timing requirements for Hg allowance allocations.

(a) By November 17, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

* * * * *

[FR Doc. 05–21457 Filed 10–27–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
October 28, 2005

Part IV

The President

Presidential Determination No. 2006–01 of October 14, 2005—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization (PLO) Office

Presidential Determination No. 2006–02 of October 16, 2005—Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Federal Register
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Presidential Documents

Title 3—

The President

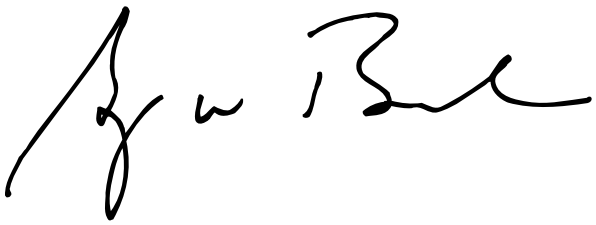
Presidential Determination No. 2006–01 of October 14, 2005

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization (PLO) Office

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, Public Law 108–447, as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2006 (Public Law 109–77), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 14, 2005.

[FR Doc. 05–21614
Filed 10–27–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

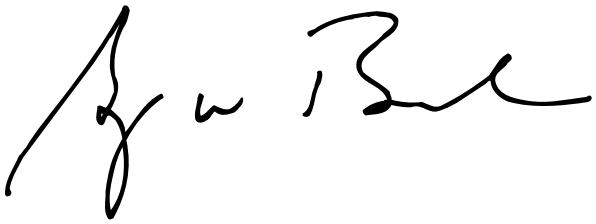
Presidential Determination No. 2006–02 of October 16, 2005

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. § 2291–4), I hereby certify, with respect to Brazil, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify Congress of this determination.



THE WHITE HOUSE,
Washington, October 16, 2005.

[FR Doc. 05–21615
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Non-vessel-operating common carrier service arrangements; published 9-28-05

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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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S. 397/P.L. 109–92

Protection of Lawful Commerce in Arms Act (Oct. 26, 2005; 119 Stat. 2095)

S. 55/P.L. 109–93

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S. 156/P.L. 109–94

Ojito Wilderness Act (Oct. 26, 2005; 119 Stat. 2106)

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