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Contents

Federal Register

Vol. 70, No. 225

Wednesday, November 23, 2005

Agriculture Department
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70782

Air Force Department
NOTICES
Privacy Act; systems of records, 70790–70793

Architectural and Transportation Barriers Compliance Board

RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Public rights-of-way, 70734

Army Department
NOTICES
Environmental statements; notice of intent:
2005 Base Closure and Realignment Commission; realignment actions, 70793–70795

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act; systems of records, 70849–70855

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Bering Sea, Aleutian Islands, Unalaska Island, AK, 70732–70734
St. John's River, FL, 70730–70732
NOTICES
Environmental statements; notice of intent:
Nationwide Automatic Identification System; meeting, 70862–70865

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Exchange Act:
Futures commission merchants and specified foreign currency forward and inventory capital charges; alternative market risk and credit risk capital charges, 70749–70750

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70919–70920

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency
NOTICES
Privacy Act; systems of records, 70789–70790

Defense Logistics Agency
NOTICES
Privacy Act; systems of records, 70795–70798

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70798–70800

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Champion Laboratories, Inc., 70881
Edward Fields, Inc., 70881
Fairfield Textile Corp. et al., 70881–70884
Farris Fashions, Inc., et al., 70884–70885
Lea Industries, La-Z-Boy Greensboro, Inc., 70885
Mueller Copper Tube Products, Inc., 70885–70886
New Riverside Ochre Co., 70886

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
RULES
Energy conservation:
Alternative fuel conservation program—
Emergency repair and restoration vehicle exclusions; documentation guidelines, 70703
NOTICES
Committees; establishment, renewal, termination, etc.:
Hydrogen Technical and Fuel Cell Advisory Committee, 70800–70801

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 70734–70736
Texas, 70736–70737
Hazardous waste program authorizations:
Indiana, 70740–70742
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tralkoxydim, 70737–70740
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana, 70751–70761

Air quality implementation plans; approval and promulgation; various States:
California, 70750–70751
Hazardous waste program authorizations:
Michigan, 70761–70765
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70819–70828
Grants and cooperative agreements; availability, etc.:
Tribal Solid Waste Management Assistance Project, 70828
Meetings:
Science Advisory Board, 70828–70829
Pesticide programs:
Risk assessments—
Acetochlor, 70832–70834
Maleic hydrazide, 70834–70836
Resmethrin, 70829–70832
Pesticide registration, cancellation, etc.:
Dow AgroSciences LLC, 70837–70838
Falcon Lab, LLC, 70838–70840
Reports and guidance documents; availability, etc.:
1998 Aarhus Persistent Organic Pollutants Protocol; additions, 70840–70841
Solid waste:
Municipal solid waste landfill permit programs—
Illinois, 70841–70842

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 70715–70718
Boeing, 70711–70715, 70718–70720
Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 70707–70711
PROPOSED RULES
Airworthiness directives:
Boeing, 70749
Airworthiness standards:
Transport category airplanes—
Fuel tank flammability reduction, 70922–70962

Federal Communications Commission
RULES
Radio stations; table of assignments:
Georgia, 70742
Michigan, 70742–70743
Oregon, 70743
Various States, 70743–70744
PROPOSED RULES
Radio stations; table of assignments:
Kentucky and Virginia, 70777–70778
Louisiana and Texas, 70774
Michigan, 70773–70774
Nebraska and Kansas, 70778–70779
New York, 70774–70775
Oklahoma, 70775–70776
Texas, 70776–70777
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70842–70847
Meetings:
Network Reliability and Interoperability Council, 70847
Rulemaking proceedings; petitions filed, granted, denied, etc., 70847

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70865–70873

Federal Energy Regulatory Commission
NOTICES
Organization, functions, and authority delegations:
Natural Gas Act Section 3 and 7 proceedings; coordinated processing, 70801–70802
Practice and procedure:
Natural gas pipelines; selective discounting policy, 70802–70819

Federal Highway Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70913
Environmental statements; notice of intent:
Miami-Dade County, FL, 70913–70914

Federal Maritime Commission
NOTICES
Agreements filed, etc., 70848
Ocean transportation intermediary licenses:
Maxfreight International Logistics, Inc., et al., 70848

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 70848–70849
Permissible nonbanking activities, 70849

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Mexican bobcat, 70779–70780
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70873–70875
Comprehensive conservation plans; availability, etc.:
Logan Cave National Wildlife Refuge, AR, 70878–70879
Endangered and threatened species:
Columbian white-tailed deer; post-delisting monitoring plan, 70876
Endangered and threatened species permit determinations, etc., 70875–70876
Environmental statements; availability, etc.:
Survival enhancement permits—
Southwestern Montana; fluvial Arctic grayling; candidate conservation agreement, 70877–70878

Food and Drug Administration
RULES
Human drugs:
Unapproved new investigational drug products; export requirements, 70720–70730

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Poultry product exportation to United States; eligible countries; addition—
China, 70746–70749

Forest Service
NOTICES
Environmental statements; notice of intent:
Okanogan-Wenatchee National Forests, WA, 70782

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Minnesota, 70782–70784

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
PROPOSED RULES
Health resources development:
Organ Procurement and Transplantation Network—
Intestines, 70765–70768

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Ships carrying dangerous chemicals in bulk, international code for construction and equipment; manufacturers deadline, 70861–70862

Industry and Security Bureau
NOTICES
Meetings:
Materials Technical Advisory Committee, 70784
Regulations and Procedures Technical Advisory Committee, 70784

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Circular welded carbon steel pipes and tubes from—
Thailand, 70785
Steel concrete reinforcing bars from—
Turkey, 70785
Scope rulings and anticircumvention determinations; list, 70785–70787

International Trade Commission
NOTICES
Import investigations:
Liquid sulfur dioxide from—
Canada, 70879–70880
Meetings; Sunshine Act, 70880

Justice Department
NOTICES
Pollution control; consent judgments:
General Electric Co., 70880

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70880–70881

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Boise District, 70879

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 70887–70888

National Foundation on the Arts and the Humanities
PROPOSED RULES
Privacy Act; implementation, 70768–70773

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Les Entreprises Michel Corbeil Inc., 70914
Michelin North America, Inc., 70914–70915
Weekend Warrior Trailers, Inc., 70915–70916

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Visiting Committee, 70787–70788

National Institutes of Health
NOTICES
Meetings:
Advisory Committee to Director, 70855
National Cancer Institute, 70855–70856
National Eye Institute, 70856
National Institute of Allergy and Infectious Diseases, 70857
National Institute of Child Health and Human Development, 70858–70860
National Institute of Dental and Craniofacial Research, 70856–70857
National Institute of Diabetes and Digestive and Kidney Diseases, 70857–70858
National Institute of Mental Health, 70859
National Institute on Alcohol Abuse and Alcoholism, 70858–70859
Scientific Review Center, 70860

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, 70744–70745
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp, 70780–70781
NOTICES
Marine mammal permit determinations, etc., 70788
Meetings:
Caribbean Fishery Management Council, 70788–70789

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Parker Hughes Institute, 70897–70898
Regulatory agreements:
Minnesota, 70894–70897

Applications, hearings, determinations, etc.:
FPL Energy Seabrook, LLC, 70888–70889
Nuclear Management Co., LLC, 70889–70892
Williams Industrial Services Group, LLC, 70892–70893

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 70886–70887

Office of United States Trade Representative
See Trade Representative, Office of United States

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 70916–70918

Postal Service
RULES
Domestic Mail Manual:
International rate schedules; Marshall Islands and Micronesia, 70982
International Mail Manual:
Issue 31; issuance and incorporation by reference, 70964
Marshall Islands and Micronesia, 70976–70982
Postal rate and fee changes, 70964–70976

Presidential Documents
PROCLAMATIONS
Special observances:
Thanksgiving Day (Proc. 7963), 70983–70986
National Family Week (Proc. 7964), 70987–70989

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 70898
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 70898–70902
Chicago Board Options Exchange, Inc., 70902
Depository Trust Co., 70902–70907
National Association of Securities Dealers, Inc.; correction, 70907–70910
Options Clearing Corp., 70910–70911

Small Business Administration
RULES
Cosponsorships, fee and non-fee based SBA-sponsored activities, and gifts; implementation and minimum requirements, 70703–70707
NOTICES
Meetings:
District and Regional Advisory Councils—Wisconsin, 70911

Substance Abuse and Mental Health Services Administration

NOTICES
Meetings:
Drug Testing Advisory Board, 70860–70861

Surface Transportation Board
NOTICES
Rail carriers:
Railroad revenue adequacy determinations; Class I railroads; 2004 determination, 70918–70919
Railroad operation, acquisition, construction, control, etc.:
D&W Railroad, Inc., 70919

Trade Representative, Office of United States
NOTICES
Trade Policy Staff Committee:
U.S.-Thailand Free Trade Agreement—Environmental review, 70911–70912

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 70912
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 70912–70913

Treasury Department
See Comptroller of the Currency

Veterans Affairs Department
NOTICES
Inventions, Government-owned; availability for licensing, 70920
Meetings:
Gulf War Veterans' Illnesses Research Advisory Committee, 70920
Professional Certification and Licensure Advisory Committee, 70920

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 70922–70962

Part III
Postal Service, 70964–70982

Part IV
Executive Office of the President, Presidential Document, 70983–70986

Part V
Executive Office of the President, Presidential Document, 70987–70989

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
7963.....70985
7964.....70989

9 CFR

Proposed Rules:
381.....70746

10 CFR
490.....70703

13 CFR
106.....70703

14 CFR
39 (5 documents) 70707, 70711, 70713, 70715, 70718

Proposed Rules:
25.....70922
39.....70749
91.....70922
121.....70922
125.....70922
129.....70922

17 CFR

Proposed Rules:
1.....70749
145.....70749
147.....70749

21 CFR
312.....70720

33 CFR
165 (2 documents) 70730, 70732

36 CFR
1190.....70734
1191.....70734

39 CFR
20 (3 documents) 70964, 70976
111.....70982

40 CFR
52 (2 documents) 70734, 70736
180.....70737
271.....70740

Proposed Rules:
52 (2 documents) 70750, 70751
81.....70751
271.....70761

42 CFR

Proposed Rules:
121.....70765

45 CFR

Proposed Rules:
1182.....70768

47 CFR
73 (4 documents) 70742, 70743

Proposed Rules:
73 (10 documents) 70773, 70774, 70775, 70776, 70777, 70778

50 CFR
648.....70744

Proposed Rules:
17.....70779
622.....70780

Rules and Regulations

Federal Register
Vol. 70, No. 225
Wednesday, November 23, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Alternative Fuel Transportation Program; Emergency Exemption

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability of ''Documentation Guidelines for Emergency Repair and Restoration Vehicle Exclusions.''

SUMMARY: This notice announces the availability of a Department of Energy (DOE) document that provides guidelines to fleets covered under 10 CFR part 490 for submission of documentation for exclusion of vehicles directly used in the emergency repair or restoration of electricity service following power outages.

ADDRESSES: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE–2G, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

The entire document with complete instructions for interested parties, ''Documentation Guidelines for Emergency Repair and Restoration Vehicle Exclusions,'' may be found at the Web site address *http://www.eere.energy.gov/vehiclesandfuels/epact/state/state_resources.shtml.*

FOR FURTHER INFORMATION CONTACT: Linda Bluestein on (202) 586–6116 or *linda.bluestein@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 707 of the Energy Policy Act of 2005 (Pub. L. 109–58) amended the list of excluded vehicles in section 301(9) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13211(9)) to add a new category of vehicles. Excluded vehicles are not counted when determining if an entity is covered and also are not counted when determining a covered entity's annual alternative fueled vehicle acquisition requirements. The vehicles excluded by this amendment are ''* * * vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages * * *.''

Written requests for exclusion will be evaluated by DOE and considered on a case-by-case basis. Under this process, the requesting entity must justify that its vehicles are used directly in repair/restoration activities. DOE's review is expected to take no more than 45 days from the time sufficient information is provided to make a decision. Based upon DOE's decision, the requesting party will know how many vehicles it can then exclude (subtract) from its covered light-duty vehicle count, which is used to calculate its annual requirements.

Issued in Washington, DC, on November 17, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05–23175 Filed 11–22–05; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 106

RIN 3245–AF37

Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Reauthorization and Manufacturing Assistance Act of 2004 requires the U.S. Small Business Administration (SBA or Agency) to promulgate regulations to carry out the Agency's statutory authority to provide assistance for the benefit of small business through activities sponsored with outside entities (for-profit and not-for-profit entities and Federal, state and local government officials or entities) as well as activities solely sponsored by SBA. This final rule implements that authority and sets forth minimum requirements for these activities as well as the Agency's solicitation and acceptance of gifts.

DATES: This rule is effective on November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Gangwere, Deputy General Counsel, (202) 205–6642.

SUPPLEMENTARY INFORMATION:

A. Background

On July 11, 2005, SBA published a proposed rule in the **Federal Register,** 70 FR 39667, to solicit comments on its proposal to promulgate regulations required by the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (reauthorization Act), signed into law on December 8, 2004. Pub. L. 108–447, Division K, 118 Stat. 2809–644 (2004). The statute reauthorized SBA's cosponsorship authority, provided SBA with authority to conduct and charge fees for certain SBA-sponsored activities (Fee Based SBA-Sponsored Activities), and expanded SBA's authority to use certain gift funds for marketing and outreach activities. The statute also made significant changes to the approval process for outreach activities and gift acceptance. With this new authority added to its continuing authority under section 8(b)(1)(a) of the Small Business Act, the Agency has three major vehicles by which it may provide information, training, and/or conduct marketing and outreach for the benefit of or to small businesses: Cosponsored Activities, Fee Based SBA-Sponsored Activities, and Non-Fee Based SBA-Sponsored Activities.

To facilitate these activities and to implement the recent statutory changes, SBA proposed adding part 106 to title 13 of the Code of Federal Regulations. The proposed regulations defined each of these vehicles and set forth the minimum requirements applicable to each. In addition, the proposed regulations set forth minimum requirements and the conflict of interest authority for solicitation and acceptance of gifts under certain Agency gift authorities.

B. Discussion of Comments

These rules were published as proposed rules on July 11, 2005 in the **Federal Register,** (70 FR 39667–39672). Comments were solicited in that

publication and could be submitted by mail, electronic means, or hand delivery/courier.

No comments were received by e-mail, facsimile, TDD, mail or courier. However, in reviewing the proposed regulations, the Agency noted a redundancy in Paragraphs (d)(1) and (d)(2) of Sections 106.302 and 106.402. In the final regulations, Paragraph (d)(1) of each of the proposed sections, which stated, ''SBA will not unnecessarily promote a Donor, or the Donor's products or services'' will be deleted. Paragraphs (d)(2) and (d)(3) of each proposed Section will be renumbered (d)(1) and (d)(2) respectively in the final regulations. Therefore, we are publishing the final rule with these minor technical changes.

C. Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. In this case, the final regulations address the administrative requirements for Agency management of SBA outreach programs. In other words, this final rule will not result in the direct regulation of small entities, so no further analysis is required by the RFA. Therefore, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of RFA.

List of Subjects in 13 CFR Part 106

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Small businesses, Intergovernmental relations.

■ For the reasons stated in the preamble, SBA adds 13 CFR part 106, as follows:

PART 106—COSPONSORSHIPS, FEE AND NON-FEE BASED SBA-SPONSORED ACTIVITIES AND GIFTS

Subpart A—Scope and Definitions

Sec.

106.100 Scope.
106.101 Definitions.

Subpart B—Cosponsored Activities

106.200 Cosponsored Activity.
106.201 Who may be a Cosponsor?
106.202 What are the minimum requirements applicable to Cosponsored Activities?
106.203 What provisions must be set forth in a Cosponsorship Agreement?
106.204 Who has the authority to approve and sign a Cosponsorship Agreement?

Subpart C—Fee Based SBA-Sponsored Activities

106.300 Fee Based SBA-Sponsored Activity.
106.301 What are the minimum requirements applicable to Fee Based SBA-Sponsored Activities?
106.302 What provisions must be set forth in a Fee Based Record?
106.303 Who has the authority to approve and sign a Fee Based Record?

Subpart D—Non-Fee Based SBA-Sponsored Activities

106.400 Non-Fee Based SBA-Sponsored Activity.
106.401 What are the minimum requirements applicable to a Non-Fee Based SBA-Sponsored Activity?
106.402 What provisions must be set forth in a Non-Fee Based Record?
106.403 Who has the authority to approve and sign a Non-Fee Based Record?

Subpart E—Gifts

106.500 What is SBA's Gift authority?
106.501 What minimum requirements are applicable to SBA's solicitation and/or acceptance of Gifts?
106.502 Who has authority to perform a Gift conflict of interest determination?
106.503 Are there types of Gifts which SBA may not solicit and/or accept?

Authority: 15 U.S.C. 633 (g) and (h); 15 U.S.C. 637(b)(1)(A); 15 U.S.C. 637(b)(G).

Subpart A—Scope and Definitions

§ 106.100 Scope.

The regulations in this part apply to SBA-provided assistance for the benefit of small business through Fee Based SBA-Sponsored Activities or through Cosponsored Activities with Eligible Entities authorized under section 4(h) of the Small Business Act, and to SBA assistance provided directly to small business concerns through Non-Fee Based SBA-Sponsored Activities authorized under section 8(b)(1)(A) of the Small Business Act. The regulations in this part also apply to SBA's solicitation and acceptance of Gifts under certain sections (sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2)) of the Small Business Act (15 U.S.C. 631 *et seq.*), including Gifts of cash, property, services and subsistence. Under section 4(g) of the Small Business Act, Gifts may be solicited and accepted for marketing and outreach purposes including the cost of promotional items and wearing apparel.

§ 106.101 Definitions.

The following definitions apply to this part. Defined terms are capitalized wherever they appear.

(a) *Cosponsor* means an entity or individual designated in § 106.201 that has signed a written Cosponsorship Agreement with SBA and who actively and substantially participates in planning and conducting an agreed upon Cosponsored Activity.

(b) *Cosponsored Activity* means an activity, event, project or initiative, designed to provide assistance for the benefit of small business as authorized by section 4(h) of the Small Business Act, which has been set forth in an approved written Cosponsorship Agreement. The Cosponsored Activity must be planned and conducted by SBA and one or more Cosponsors. Assistance for purposes of Cosponsored Activity does not include grant or any other form of financial assistance. A Participant Fee may be charged by SBA or another Cosponsor at any Cosponsored Activity.

(c) *Cosponsorship Agreement* means an approved written document (as outlined in §§ 106.203 and 106.204 which has been duly executed by SBA and one or more Cosponsors. The Cosponsorship Agreement shall contain the parties' respective rights, duties and responsibilities regarding implementation of the Cosponsored Activity.

(d) *Donor* means an individual or entity that provides a Gift, bequest or devise (in cash or in-kind) to SBA.

(e) An *Eligible Entity* is a potential Cosponsor. An Eligible Entity must be a for-profit or not-for-profit entity, or a Federal, State or local government official or entity.

(f) *Fee Based SBA-Sponsored Activity Record* (Fee Based Record) means a written document, as outlined in § 106.302, describing a Fee Based SBA-Sponsored Activity and approved in writing pursuant to § 106.303.

(g) *Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance for the benefit of small business, as authorized by section 4(h) of the Small Business Act, at which SBA may charge a Participant Fee. Assistance for purposes of Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA.

(h) *Gift* (including a bequest or a device) is the voluntary transfer to SBA of something of value without the Donor receiving legal consideration.

(i) *Non-Fee Based SBA-Sponsored Activity Record* (Non-Fee Based Record) means a written document describing a Non-Fee Based SBA-Sponsored Activity which has been approved pursuant to § 106.403.

(j) *Non-Fee Based SBA-Sponsored Activity* means an activity, event, project or initiative designed to provide assistance directly to small business concerns as authorized by section 8(b)(1)(A) of the Small Business Act. Assistance for purposes of a Non-Fee Based SBA-Sponsored Activity does not include grant or any other form of financial assistance. A Non-Fee Based SBA-Sponsored Activity must be planned, conducted, controlled and sponsored solely by SBA. No fees including Participant Fees may be charged for a Non-Fee Based SBA-Sponsored Activity.

(k) *Participant Fee* means a minimal fee assessed against a person or entity that participates in a Cosponsored Activity or Fee Based SBA-Sponsored Activity and is used to cover the direct costs of such activity.

(l) *Responsible Program Official* is an SBA senior management official from the originating office who is accountable for the solicitation and/or acceptance of a Gift to the SBA; a Cosponsored Activity; a Fee Based SBA-Sponsored Activity; or a Non-Fee Based SBA-Sponsored Activity. If the originating office is a district or branch office, the Responsible Program Official is the district director or their deputy. In headquarters, the Responsible Program Official is the management board member or their deputy with responsibility for the relevant program area.

Subpart B—Cosponsored Activities

§ 106.200 Cosponsored Activity.

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Cosponsored Activities pursuant to section 4(h) of the Small Business Act.

§ 106.201 Who may be a Cosponsor?

(a) Except as specified in paragraph (b) of this section, SBA may enter into a Cosponsorship Agreement with an Eligible Entity as defined in § 106.101(e).

(b) SBA may not enter into a Cosponsorship Agreement with an Eligible Entity if the Administrator (or designee), after consultation with the General Counsel (or designee), determines that such agreement would create a conflict of interest.

§ 106.202 What are the minimum requirements applicable to Cosponsored Activities?

While SBA may subject a Cosponsored Activity to additional requirements through internal policy, procedure and the Cosponsorship Agreement, the following requirements apply to all Cosponsored Activities:

(a) Cosponsored Activities must be set forth in a written Cosponsorship Agreement signed by the Administrator (or designee) and each Cosponsor;

(b) Appropriate recognition must be given to SBA and each Cosponsor but shall not constitute or imply an endorsement by SBA of any Cosponsor or any Cosponsor's products or services;

(c) Any printed or electronically generated material used to publicize or conduct the Cosponsored Activity, including any material which has been developed, prepared or acquired by a Cosponsor, must be approved in advance by the Responsible Program Official and must include a prominent disclaimer stating that the Cosponsored Activity does not constitute or imply an endorsement by SBA of any Cosponsor or the Cosponsor's products or services;

(d) No Cosponsor shall make a profit on any Cosponsored Activity. SBA grantees who earn program income on Cosponsored Activities must use that program income for the Cosponsored Activity;

(e) Participant Fee(s) charged for a Cosponsored Activity may not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity and must be liquidated prior to other sources of funding for the Cosponsored Activity. If SBA charges a Participant Fee, the collection of the Participant Fees is subject to internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines;

(f) SBA may not provide a Cosponsor with lists of names and addresses of small business concerns compiled by SBA which are otherwise protected by law or policy from disclosure; and

(g) Written approval must be obtained as outlined in § 106.204.

§ 106.203 What provisions must be set forth in a Cosponsorship Agreement?

While SBA may require additional provisions in the Cosponsorship Agreement through internal policy and procedure, the following provisions must be in all Cosponsorship Agreements:

(a) A written statement agreed to by each Cosponsor that they will abide by all of the provisions of the Cosponsorship Agreement, the requirements of this subpart as well the applicable definitions in § 106.100;

(b) A narrative description of the Cosponsored Activity;

(c) A listing of SBA's and each Cosponsor's rights, duties and responsibilities with regard to the Cosponsored Activity;

(d) A proposed budget demonstrating:

(1) The type and source of financial contribution(s) (including but not limited to cash, in-kind, Gifts, and Participant Fees) that the SBA and each Cosponsor will make to the Cosponsored Activity; and

(2) A reasonable estimation of all anticipated expenses;

(e) A written statement that each Cosponsor agrees that they will not make a profit on the Cosponsored Activity; and

(f) A written statement that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Cosponsored Activity as outlined in the budget and will be liquidated prior to other sources of funding for the Cosponsored Activity.

§ 106.204 Who has the authority to approve and sign a Cosponsorship Agreement?

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve each Cosponsored Activity and sign each

Cosponsorship Agreement. This authority cannot be re-delegated.

Subpart C—Fee Based SBA-Sponsored Activities

§ 106.300 Fee Based SBA-Sponsored Activity.

The Administrator (or designee), after consultation with the General Counsel (or designee), may provide assistance for the benefit of small business through Fee-Based SBA-Sponsored Activities pursuant to section 4(h) of the Small Business Act.

§ 106.301 What are the minimum requirements applicable to Fee Based SBA-Sponsored Activities?

While SBA may subject a Fee Based SBA-Sponsored Activity to additional requirements through internal policy and procedure, the following requirements apply to all Fee Based SBA-Sponsored Activities:

(a) A Fee Based Record must be prepared by the Responsible Program Official in advance of the activity;

(b) Any Participant Fees charged will not exceed the minimal amount needed to cover the anticipated direct costs of the activity;

(c) Gifts of cash accepted and the collection of Participant Fees for Fee Based SBA-Sponsored Activities are subject to the applicable requirements in this part, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and

(d) Written approval must be obtained as outlined in § 106.303.

§ 106.302 What provisions must be set forth in a Fee Based Record?

A Fee Based Record must contain the following:

(a) A narrative description of the Fee Based SBA-Sponsored Activity;

(b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Fee Based SBA-Sponsored Activities;

(c) A proposed budget demonstrating:

(1) All sources of funding, including annual appropriations, Participant Fees and Gifts, to be used in support of the Fee Based SBA-Sponsored Activity;

(2) A reasonable estimation of all anticipated expenses, which indicates that no profit is anticipated from the Fee Based SBA-Sponsored Activity; and

(3) A provision stating that Participant Fees, if charged, will not exceed the minimal amount needed to cover the anticipated direct costs of the Fee Based SBA-Sponsored Activity as outlined in the budget;

(d) With regard to any donations made in support of the Fee Based SBA-Sponsored Activity, the Fee Based Record will reflect the following:

(1) Each Donor may receive appropriate recognition for its Gift; and

(2) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor or the Donor's products or services.

§ 106.303 Who has authority to approve and sign a Fee Based Record?

The Administrator, or upon his/her written delegation, the Deputy Administrator, an associate or assistant administrator, after consultation with the General Counsel (or designee), has the authority to approve and sign each Fee Based Record. This authority may not be re-delegated.

Subpart D—Non-Fee Based SBA-Sponsored Activities

§ 106.400 Non-Fee Based SBA-Sponsored Activity.

The Administrator (or designee) may provide assistance directly to small business concerns through Non-Fee Based SBA-Sponsored Activities under section 8(b)(1)(A) of the Small Business Act.

§ 106.401 What are the minimum requirements applicable to a Non-Fee Based SBA-Sponsored Activities?

While SBA may subject Non-Fee Based SBA-Sponsored Activities to additional requirements through internal policy and procedure, the following requirements apply to all Non-Fee Based SBA-Sponsored Activity:

(a) A Non-Fee Based Record must be prepared and approved by the Responsible Program Official in advance of the activity;

(b) Gifts of cash accepted for Non-Fee Based SBA-Sponsored Activities are subject to § 106.500, internal SBA policies and procedures as well as applicable U.S. Treasury rules and guidelines; and

(c) Written approval must be obtained as outlined in § 106.403.

§ 106.402 What provisions must be set forth in a Non-Fee Based Record?

A Non-Fee Based Record must contain the following:

(a) A narrative description of the Non-Fee Based SBA-Sponsored Activity;

(b) A certification by the Responsible Program Official that he or she will abide by the requirements contained in this part, as well as all other applicable statutes, regulations, policies and procedures for Non-Fee Based SBA-Sponsored Activities;

(c) If applicable, a list of Donors supporting the activity; and

(d) With regard to any donations made in support of a Non-Fee Based SBA-Sponsored Activity, the Non-Fee Based Record will reflect the following:

(1) Each Donor may receive appropriate recognition for its Gift; and

(2) Any printed or electronically generated material recognizing a Donor will include a prominent disclaimer stating that the acceptance of the Gift does not constitute or imply an endorsement by SBA of the Donor, or the Donor's products or services.

§ 106.403 Who has authority to approve and sign a Non-Fee Based Record?

The appropriate Responsible Program Official, after consultation with the designated legal counsel, has authority to approve and sign each Non-Fee Based Record.

Subpart E—Gifts

§ 106.500 What is SBA's Gift authority?

This section covers SBA's Gift acceptance authority under sections 4(g), 8(b)(1)(G), 5(b)(9) and 7(k)(2) of the Small Business Act.

§ 106.501 What minimum requirements are applicable to SBA's solicitation and/or acceptance of Gifts?

While SBA may subject the solicitation and/or acceptance of Gifts to additional requirements through internal policy and procedure, the following requirements must apply to all Gift solicitations and/or acceptances under the authority of the Small Business Act sections cited in § 106.500:

(a) SBA is required to use the Gift (whether cash or in-kind) in a manner consistent with the original purpose of the Gift;

(b) There must be written documentation of each Gift solicitation and/or acceptance signed by an authorized SBA official;

(c) Any Gift solicited and/or accepted must undergo a determination, prior to solicitation of the Gift or prior to acceptance of the Gift if unsolicited, of whether a conflict of interest exists between the Donor and SBA; and

(d) All cash Gifts donated to SBA under the authority cited in § 106.500 must be deposited in an SBA trust account at the U.S. Department of the Treasury.

§ 106.502 Who has authority to perform a Gift conflict of interest determination?

(a) For Gifts solicited and/or accepted under sections 4(g), 8(b)(1)(G), and

7(k)(2) of the Small Business Act, the General Counsel, or designee, must make the final conflict of interest determination. No Gift shall be solicited and/or accepted under these sections of the Small Business Act if such solicitation and/or acceptance would, in the determination of the General Counsel (or designee), create a conflict of interest.

(b) For Gifts of services and facilities solicited and/or accepted under section 5(b)(9), the conflict of interest determination may be made by designated disaster legal counsel.

§ 106.503 Are there types of Gifts which SBA may not solicit and/or accept?

Yes. SBA shall not solicit and/or accept Gifts of or for (or use cash Gifts to purchase or engage in) the following:

(a) Alcohol products;

(b) Tobacco products;

(c) Pornographic or sexually explicit objects or services;

(d) Gambling (including raffles and lotteries);

(e) Parties primarily for the benefit of Government employees; and

(f) Any other product or service prohibited by law or policy.

Dated: November 16, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–23126 Filed 11–22–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20011; Directorate Identifier 2003–NM–22–AD; Amendment 39–14382; AD 2005–24–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD currently requires revising the airplane flight manual (AFM) to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flightcrew. This new AD adds an optional revision to the AFM that allows limited APU starts and adds a terminating action. This AD results from the airplane manufacturer developing modifications that revise or eliminate the need for restrictions to in-flight APU starts. We are issuing this AD to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment.

DATES: This AD becomes effective December 28, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 28, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2001–10–01, amendment 39–12226 (66 FR 24049, May 11, 2001), for certain EMBRAER Model EMB–135 and EMB–145 series airplanes. That NPRM was published in the **Federal Register** on January 12, 2005 (70 FR 2057). That NPRM proposed to continue to require revising the airplane flight manual (AFM) to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flightcrew. That NPRM also proposed an optional revision to the AFM that allows limited APU starts and a terminating action.

Comments

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

Request To Revise Applicability to Refer to Model T–62T–40C14 as APS 500R

One commenter requests that the applicability be revised to refer to Model T–62T–40C14 as APS 500R. The commenter states that the commercial model designation for APU model T–62T–40C14 is APS 500R. The ''S'' in APS 500R is not a typographical error, as stated in the NPRM, and is the correct nomenclature.

We agree with the commenter and have revised the applicability of the final rule. This revision does not change the number of airplanes affected by the final rule.

Request To Revise Description of Part Number (P/N) 120–45060–001

One commenter requests that the description of P/N 120–45060–001 in the second paragraph of the ''Relevant Service Information'' section of the NPRM be revised. The commenter states that ''flush-type APU air inlet'' should be revised to ''flush-type air inlet frame.''

We agree with the commenter that the part is a flush-type air inlet frame and we have revised paragraph (g) of the final rule to specify installing a ''flush-type APU air inlet frame.'' We have not revised the ''Relevant Service Information'' section, as that section is not restated in the final rule.

Request To Refer to Latest Revision of EMBRAER Service Bulletin 145–49–0018

Two commenters request that the NPRM refer to the latest revision of EMBRAER Service Bulletin 145–49–0018. One commenter states that EMBRAER Service Bulletin 145–49–0018, Change 03, dated January 3, 2002 (referenced as the appropriate source of service information for accomplishing the actions specified in paragraph (h) of the NPRM) should be replaced with Change 04, dated November 26, 2002. The other commenter states that

Revision 8 is the latest revision of the service bulletin.

We agree to revise the final rule to reference EMBRAER Service Bulletin 145–49–0018, Change 04, dated November 26, 2002, which is the latest revision. The procedures in Change 04 of the service bulletin are essentially the same as those in Change 03 of the referenced service bulletin. We have also added Change 03 of the service bulletin to paragraph (k) of the final rule to state that actions accomplished before the effective date of this AD per Change 03 of the service bulletin are acceptable for compliance with the requirements of this final rule.

Request To Revise Description of P/N 145–48999–401

Two commenters request that, where the NPRM refers to P/N 145–48999–401 as a flush-type air inlet, the reference should be revised to say a raised-type APU air inlet frame. One commenter states that EMBRAER Service Bulletin 145–49–0018 (referenced as the appropriate source of service information for accomplishing the actions specified in paragraph (h) of the NPRM) refers to P/N 145–48999–401 as a raised-type APU air inlet frame. In addition, the service bulletin describes P/N 145–52453–401 as a raised-type APU air inlet frame.

We agree with the commenters. Both part numbers are raised-type APU air inlet frames that may be installed in accordance with EMBRAER Service Bulletin 145–49–0018, Change 04, dated November 26, 2002. We have revised paragraph (h) of the final rule to specify installing a ''raised-type APU air inlet frame.''

Request To Refer to Latest Revision of EMBRAER Service Bulletin 145–49–0009

Two commenters request that the NPRM refer to the latest revision of EMBRAER Service Bulletin 145–49–0009. One commenter states that EMBRAER Service Bulletin 145–49–0009, Change 07, dated September 1, 2002 (referenced as the appropriate source of service information for accomplishing the actions specified in paragraph (i) of the NPRM) should be replaced with Change 08, dated September 1, 2003. One commenter also notes that the NPRM did not give credit for actions done in accordance with previous issues because Change 07 of the service bulletin contains additional actions. The commenter states that the only difference in Change 07 is that it mentions the new APU exhaust silencer P/N 4503801C. The commenter also points out that AD 2004–23–09, amendment 39–13864 (69 FR 65535), mandates the modification of the APU exhaust silencer to P/N 4503801C. Thus, the commenter requests that operators be given credit for previous issues of the service bulletin.

We agree to revise paragraph (i) of the final rule to reference EMBRAER Service Bulletin 145–49–0009, Change 09, dated April 12, 2005, which is the latest revision. The procedures in Change 09 of the service bulletin are essentially the same as those in Change 07 of the service bulletin. We have also added Change 03 through Change 08 of the service bulletin to paragraph (k) of the final rule to state that actions accomplished before the effective date of this AD per those revisions of the service bulletin are acceptable for compliance with the corresponding requirements of this final rule.

Request To Allow Previous Alternative Methods of Compliance (AMOCs) To Be Approved for Paragraphs (g) and (h)

One commenter requests that AMOC paragraph (l)(2) of the NPRM be revised to allow previous AMOCs to be approved for paragraphs (g) and (h) (in addition to paragraph (f)). The commenter states that the modifications to the APU inlet and exhaust already approved as AMOCs for AD 2001–10–01 ensure a positive pressure differential from forward to aft through the compartment, preventing any exhaust flame from propagating forward into the APU compartment. The commenter understands that the AMOCs are also terminating action for paragraphs (g) and (h), not requiring additional action from the operators.

We do not agree to revise paragraph (l)(3) of the final rule (specified as paragraph (l)(2) in the NPRM). Not all existing AMOCs for AD 2001–10–01 are terminating action for paragraphs (g) and (h). The existing AMOCs have various configurations and service bulletins that are acceptable for compliance with just the revisions, with the revisions and part of the terminating action, or with the terminating action. We have determined that the best way to handle such circumstances is for operators to request an AMOC in accordance with paragraph (l) of the final rule, rather than increasing the complexity of the AD by addressing each existing AMOC's unique situation. We have not revised the final rule in this regard.

Request To Revise NPRM To Reference P/Ns or Configurations and Service Bulletins That Could Be AMOCs

Two commenters request that the NPRM be revised to reference P/Ns or configurations and service bulletins that could be AMOCs. One commenter references multiple AMOCs for AD 2001–10–01 that would be acceptable for compliance for (f), (g), and (h) of the NPRM. The commenter suggests eliminating the reference to the service bulletin in paragraph (h) and listing all acceptable P/Ns for the raised-type APU air inlet frame and revising paragraph (i) of the NPRM to reference either the exhaust silencer or the extended or new exhaust pipes. The commenter contends these changes would address the unsafe condition.

The other commenter notes that the correct configuration of the airplane can be achieved through various revisions of several service bulletins and includes several AMOCs for AD 2001–10–01. This commenter suggests that the NPRM reference the part number 145–48999–401 or 145–52452–401 (or later approved part numbers) and a silencer measurement of 1300 millimeters on C14 APU equipped aircraft. As an alternative to these changes, the commenters suggest that the NPRM should list all configurations and service bulletin versions that are an optional means of terminating the NPRM. The commenter states that either one of its suggestions allow operators to operate their aircraft without having to incur additional and excessive expenses.

We disagree with the request to revise the final rule to reference P/Ns or configurations and service bulletins that could be AMOCs. As stated in the response to the previous comment, due to the number and complexity of AMOCs for AD 2001–10–01 and the revisions to the various service bulletins, we cannot list every configuration that could be terminating action for paragraph (g) and/or paragraph (h) of the final rule. We also cannot list part numbers because terminating action must be done in a method approved by us or in accordance with service information we have reviewed. However, operators may request an AMOC in accordance with paragraph (l) of the final rule. We have not revised the final rule in this regard.

Request To Determine if All U.S. Operators Are in Compliance

One commenter suggests that U.S. operators be polled to find out if any operator is flying airplanes without the desired configuration. The commenter states that if all operators' airplanes are in the desired configuration, then the NPRM may be withdrawn. The commenter notes that this suggestion has been done on other NPRMs prior to this one.

We do not agree with the commenter. We have not received confirmation that all U.S. operators are in compliance with the requirements of the final rule. Even if the current U.S.-registered fleet is in compliance with the requirements of the final rule, the issuance of the rule is still necessary to ensure that any affected airplane imported and placed on the U.S. register in the future will be required to be in compliance as well. Unless the manufacturer advises us that all of the affected airplanes worldwide have been modified, it is possible that an airplane could be imported to the U.S. in the future without being in compliance with the final rule.

Additional Change to Applicability

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

Explanation of Changes to Final Rule

We have also revised certain references to the service bulletins in the final rule to clarify that the actions are done in accordance with the accomplishment instructions of the service bulletins.

We have also made minor editorial changes to the format of the tables in the final rule.

Clarification of AMOC Paragraph

We have revised this final rule to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table, using an estimated labor rate of $65 per work hour, provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of placard (required by AD 2001–10–01)	1	None	$65	290	$18,850.
Terminating action (new action)	4	$1,514	1,774	290	514,460.
Concurrent action (new action)	6	$38,500	38,890	290	11,278,100.
Optional installation of APU air inlet and placard (new optional action).	2	397	527	290	Up to 152,830.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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 removing amendment 39–12226 (66 FR 24049, May 11, 2001) and by adding the following new airworthiness directive (AD):

2005–24–02 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14382. Docket No. FAA–2005–20011; Directorate Identifier 2003–NM–22–AD.

Effective Date

(a) This AD becomes effective December 28, 2005.

Affected ADs

(b) This AD supersedes AD 2001–10–01.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; equipped with Hamilton Sundstrand auxiliary power unit (APU) Model T–62T–40C14 (APS 500R).

Unsafe Condition

(d) This AD was prompted by the airplane manufacturer developing modifications that revise or eliminate the need for restrictions to in-flight APU starts. We are issuing this AD to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment.

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.

Requirements of AD 2001–10–01 and New Note

Airplane Flight Manual (AFM) Revision

(f) Within 25 flight hours or 10 days after May 29, 2001 (the effective date of AD 2001–10–01), whichever occurs first, accomplish the actions required by paragraphs (f)(1) and (f)(2) of this AD.

(1) Install a placard on or near the APU start/stop switch panel that reads:

''CAUTION: IN-FLIGHT APU STARTS ARE PROHIBITED''

Note 1: Installing a placard in accordance with EMBRAER Alert Service Bulletin 145–49–A017, dated April 12, 2001, is acceptable for compliance with the action required by paragraph (f)(1) of this AD.

(2) Revise the Limitations section of the AFM to include the information on the placard, as specified in paragraph (f)(1) of this AD, and to limit APU starts to ground conditions only. This may be accomplished by inserting a copy of this AD in the AFM.

Note 2: Because APU starts are prohibited in flight when an engine-driven generator is inoperative, the APU must be started on the ground in order to dispatch, and the APU must be kept operational for the entire flight.

Terminating Requirements of This AD and Optional Action

Optional New Limitations for APU Starts

(g) Doing the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001, terminates the requirements of paragraph (f) of this AD.

(1) Measure the gap between the APU and the APU exhaust silencer, install a flush-type APU air inlet frame, and install or replace, as applicable, the placard on or near the APU start/stop switch panel with a placard that reads:

''CAUTION: IN-FLIGHT APU STARTS ARE LIMITED TO FLIGHT ENVELOPE UP TO 15KFT/320KIAS (NORMAL APU STARTS) OR 15KFT/200KIAS (BATTERY SUPPORT ONLY)''

(2) Revise the Limitations section of the AFM to include the information on the placard specified in paragraph (g)(1) of this AD to limit APU starts. This may be accomplished by inserting a copy of this AD in the AFM. Remove any existing copy of AD 2001–10–01 from the AFM.

Terminating Action for This AD

(h) Within 8,000 flight hours after the effective date of this AD, measure the gap between the APU and the APU exhaust silencer, install a raised-type APU air inlet frame, remove any placard on or near the APU start/stop switch panel that limits APU starts, and reidentify the APU cowling, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0018, Change 04, dated November 26, 2002, except as provided by paragraph (j) of this AD. Doing the actions in paragraph (h) of this AD terminates the requirements of paragraphs (f) and (g) of this AD, and any copy of AD 2001–10–01 or this AD may be removed from the AFM.

Prior to or Concurrent Requirements

(i) Prior to or concurrently with the actions specified in paragraphs (g) and (h) of this AD, install an APU silencer in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–49–0009, Change 09, dated April 12, 2005.

Contact the FAA or Departmento de Aviacao Civil (DAC)

(j) If, during the actions specified in paragraphs (g) and (h) of this AD, any measurement exceeds the limits specified in EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001; or EMBRAER Service Bulletin 145–49–0018, Change 04, dated November 26, 2002; as applicable; and the service bulletin specifies to contact EMBRAER: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DAC (or its delegated agent).

Actions Accomplished According to Previous Issue of Service Bulletin

(k) Actions accomplished before the effective date of this AD according to the service bulletins listed in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—SERVICE BULLETINS ACCEPTABLE FOR COMPLIANCE

EMBRAER service bulletin	Change level	Date
145–49–0009	03	May 15, 2001.
145–49–0009	04	July 5, 2001.
145–49–0009	05	October 1, 2001.
145–49–0009	06	January 3, 2002.
145–49–0009	07	September 1, 2002.
145–49–0009	08	September 1, 2003.
145–49–0017	Original	May 15, 2001.
145–49–0018	03	January 3, 2002.

Alternative Methods of Compliance (AMOCs)

(l)(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 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2001–10–01, amendment 39–12226, are approved as AMOCs for the corresponding requirements in paragraph (f) of this AD.

Related Information

(m) Brazilian airworthiness directive 2001–04–02R2, dated June 29, 2001, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use the service information specified in Table 2 of this AD 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 these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, 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.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER service bulletin	Change level	Date
145–49–0009	09	April 12, 2005.
145–49–0017	01	June 7, 2001.
145–49–0018	04	November 26, 2002.

EMBRAER Service Bulletin 145–49–0017, Change 01, dated June 7, 2001, contains the following effective pages:

Page No.	Change level shown on page	Date shown on page
1, 2	01	June 7, 2001.
3–10	Original	May 15, 2001.

EMBRAER Service Bulletin 145–49–0018, Change 04, dated November 26, 2002, contains the following effective pages:

Page No.	Change level shown on page	Date shown on page
1, 2	04	November 26, 2002.
3–14	03	January 3, 2002.

Issued in Renton, Washington, on October 31, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–22972 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20629; Directorate Identifier 2004–NM–266–AD; Amendment 39–14384; AD 2005–24–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–300 series airplanes. This AD requires replacing the frequency converters used to supply power for medical and galley utility outlets with modified frequency converters, and related actions. This AD results from a report indicating that a hard short circuit condition between the output of certain frequency converters and their downstream circuit breakers will produce a continuous output current that could cause the undersized output wiring to overheat when the frequency converters fail to shut off. We are issuing this AD to prevent overheating of the output wiring of the frequency converters, which could result in the failure of a wire bundle and consequent adverse effects on other systems sharing the affected wire bundle.

DATES: Effective December 28, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 28, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767–300 series airplanes. That NPRM was published in the **Federal Register** on March 17, 2005 (70 FR 12986). That NPRM proposed to require replacing the frequency converters used to supply power for medical outlets with modified frequency converters, and related actions.

Comments

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

Request To Revise Date of Referenced Service Bulletin

One commenter, the manufacturer, requests that we revise the release date of the service bulletin referenced in the NPRM. The commenter states that the correct reference is Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003.

We agree. We inadvertently referenced the incorrect release date of Boeing Service Bulletin 767–25–0334, Revision 1. Therefore, we have revised paragraphs (c) and (f) of this AD to include the correct release date.

Request To Clarify Use of Frequency Converters

The same commenter requests that we revise the ''Summary'' and ''Relevant Service Information'' sections of the NPRM to specify that the affected frequency converters are also used for supplying power to galley utility outlets.

We agree. We have revised the ''Summary'' section and paragraph (f) of this AD to clarify that the affected frequency converters are used to supply power to ''* * * medical and galley utility outlets * * *.'' However, since the ''Relevant Service Information'' section of the preamble does not reappear in the final rule, we have not made that change.

Request To Use Alternative Method of Compliance (AMOC)

A second commenter, an operator, requests that we include an option to remove and deactivate the affected frequency converters and wiring, instead of replacing the affected frequency converters. The commenter states that it is not currently using the medical outlets and has removed the affected frequency converters from its

airplanes. The commenter also states that, if the medical outlets are later reactivated, the NPRM should require installing modified frequency converters.

We agree that removing and deactivating the affected frequency converters is adequate for addressing the unsafe condition of this AD. We have moved the proposed requirement to replace the affected frequency converters to new paragraph (f)(1) of this supplemental NPRM and have added new paragraph (f)(2) to this supplemental NPRM, which gives operators the option of deactivating the affected frequency converters. Before a deactivated frequency convert can be re-installed on an airplane, paragraph (f)(2) also would require modifying the affected frequency converters in accordance with Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003.

Request To Reference Parts Manufacturer Approval (PMA) Parts

A third commenter requests that we identify the model and part number of the affected frequency converters in the NPRM. The commenter states that the parts manufacturer of the affected frequency converters produces parts both as an original equipment manufacturer (OEM) supplier and as a direct seller under a PMA. The commenter asserts that, since parts manufacturers are encouraged to use different part numbers for PMA and OEM parts, a PMA part identical to the OEM part, but having a different part number, might be installed on an airplane. The commenter requests that the NPRM account for any PMA parts that might contain the same deficiencies as an OEM part and be installed in its place.

We do not concur with the commenter's request. Our available information indicates that any existing PMA frequency converter installed on any affected airplane retains the OEM original part number and, therefore, would be required to be removed in accordance with the Boeing service bulletin referenced in this AD as the appropriate source of service information. Once the existing parts are removed, the operator must replace it with the part numbers specified in the service bulletin in order to be in compliance with this AD. No change to the final rule is necessary in this regard.

Regarding the commenter's request to address PMA part numbers in ADs, in general, the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 55 airplanes of the affected design in the worldwide fleet. This AD affects about 54 airplanes of U.S. registry. The actions in this AD take about 1 work hour per frequency converter, at an average labor rate of $65 per work hour. There are about 2 frequency converters per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $7,020, or $130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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):

2005–24–04 Boeing: Amendment 39–14384. Docket No. FAA–2005–20629; Directorate Identifier 2004–NM–266–AD.

Effective Date

(a) This AD becomes effective December 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–300 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003.

Unsafe Condition

(d) This AD was prompted by a report indicating that a hard short circuit condition between the output of certain frequency converters and their downstream circuit breakers will produce a continuous output current that could cause the undersized output wiring to overheat when the

frequency converters fail to shut off. We are issuing this AD to prevent overheating of the output wiring of the frequency converters, which could result in the failure of a wire bundle and consequent adverse effects on other systems sharing the affected wire bundle.

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.

Replace Frequency Converters

(f) Within 18 months after the effective date of this AD, do the actions specified in either paragraph (f)(1) or (f)(2) of this AD.

(1) Replace the frequency converters used to supply power for medical and galley utility outlets with modified frequency converters, and do any related actions, by doing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003.

(2) Remove and deactivate the frequency converters used to supply power for medical and galley utility outlets, and cap and stow the frequency converter wire bundles, in accordance with B.1. through B.6. of the Accomplishment Instructions of Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003. As of the effective date of this AD, no person may install a frequency converter that has been removed and deactivated in accordance with this paragraph, unless it is modified in accordance with the Accomplishment Instructions of the service bulletin.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 767–25–0334, dated November 7, 2002, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23054 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–19682; Directorate Identifier 2004–NM–88–AD; Amendment 39–14383; AD 2005–24–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. This AD requires inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary. This AD results from a report from the manufacturer that in production, during the installation of certain attachment fasteners for the nacelle support fittings, only one washer was installed instead of two. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

DATES: This AD becomes effective December 28, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 28, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That NPRM was published in the **Federal Register** on November 24, 2004 (69 FR 68268). That NPRM proposed to require inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

One commenter supports the actions described in the NPRM.

Notice of Service Bulletin Revision

One commenter, the manufacturer, notes that there is an error in the variable numbers listed in the effectivity of Boeing Service Bulletin 737–57–1275, dated September 4, 2003 (which was referenced as the appropriate source of service information for accomplishing the proposed actions). The commenter states that this error is corrected in the next revision of the service bulletin and that correcting this error in the service bulletin will not alter the NPRM's applicability.

We agree with the commenter that the applicability of this AD is not affected by the change in variable numbers. The applicability of this AD refers to the airplane line numbers and not to the variable numbers.

Since the issuance of the NPRM, Boeing has issued Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005, which contains the same procedures as the original issue along with the corrected variable numbers. Revision 1 of the service bulletin also divides the effectivity into four groups in order to provide clarification on the different fastener installation configurations. We have revised this AD to reference Revision 1 as the appropriate source of service information for accomplishing the required actions. We have also added paragraph (h) to this AD to give credit for actions done before the effective date of this AD in accordance with the original issue of the service bulletin.

Clarification of Sealant Specification

One commenter notes that Figures 1 and 2 of Boeing Service Bulletin 737–57–1275, dated September 4, 2003, specify an obsolete sealant. The commenter states that the ''Parts and Materials Supplied by the Operator'' section of the service bulletin specifies to refer to the Qualified Parts List (QPL) at the end of the Boeing Material Specification (BMS) for supplier data; however, there is no QPL for BMS 5–26 because it is obsolete. The commenter points out that BMS 5–45 has superseded BMS 5–26.

We agree with the commenter that BMS 5–45 is the correct specification for the sealant. Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005, does contain the correct references to BMS 5–45. As stated previously, we have revised this AD to reference Revision 1 as the appropriate source of service information for accomplishing the required actions. No further work is necessary for airplanes on which Boeing Service Bulletin 737–57–1275, dated September 4, 2003, was accomplished.

Request To Revise Compliance Time

One commenter requests that we revise the compliance time specified in paragraph (f)(2) of the NPRM from prior to the accumulation of ''30,000 flight cycles or 30,000 flight hours, whichever is first'' to prior to the accumulation of ''30,000 flight cycles or 37,000 flight hours, whichever is first.'' The commenter states that 15 of its airplanes are not scheduled for a heavy ''C'' check maintenance within the 30,000-flight-hour window and the proposed compliance time would result in unnecessary financial hardship. No technical justification was provided.

We do not agree with the commenter to revise the compliance time. In developing an appropriate compliance time, we considered the safety implications, the manufacturer's recommendation, and normal maintenance schedules for timely accomplishment of the inspection. We have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the inspection is done. However, paragraph (i) of this AD provides affected operators the opportunity to apply for an adjustment of the compliance time if the operator also presents data that justify the adjustment. We have not revised this AD in this regard.

Explanation of Change Made to This AD

Boeing Commercial Airplanes has received a Delegation Option Authorization (DOA). We have revised this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to an Authorized Representative for the Boeing Commercial Airplanes DOA rather than a Designated Engineering Representative (DER).

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 751 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection/Measurement	12	$65	Nominal ...	$780	302	$235,560

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this AD 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):

2005–24–03 Boeing: Amendment 39–14383. Docket No. FAA–2005–19682; Directorate Identifier 2004–NM–88–AD.

Effective Date

(a) This AD becomes effective December 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes; line numbers 1 through 761 inclusive, except for line numbers 596, 683, 742, 749, 750, 751, 754, 755, 759, and 760; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report from the manufacturer that in production, during installation of certain attachment fasteners for the nacelle support fittings, only one washer was installed instead of two. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

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/Measurement and Related Investigative and Corrective Actions

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Inspect/measure the length of certain attachment fasteners between the lower wing skin panels and the nacelle support fittings. Do the inspection/measurement, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005, except as provided by paragraph (g) of this AD.

(1) For airplanes modified by Supplemental Type Certificate (STC) ST00830SE as of the effective date of this AD: Prior to the accumulation of 25,000 total flight hours or 25,000 total flight cycles, whichever is first.

(2) For airplanes not modified by STC ST00830SE as of the effective date of this AD: Prior to the accumulation of 30,000 total flight hours or 30,000 total flight cycles, whichever is first.

(g) If accomplishing a corrective action as required by paragraph (f) of this AD, and the service bulletin specifies to contact Boeing for repair information: Before further flight, do the repair using a method approved in accordance with paragraph (i) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 737–57–1275, dated September 4, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, 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 November 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23056 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23087; Directorate Identifier 2005–NM–225–AD; Amendment 39–14386; AD 2005–24–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 Series Airplanes, and Model A320–111 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 Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 series airplanes, and Model A320–111 airplanes. This AD requires an inspection to determine whether certain braking and steering control units (BSCUs) are installed or have ever been installed. For airplanes on which certain BSCUs are installed or have ever been installed, this AD requires an inspection of the nose landing gear (NLG) upper support and corrective action if necessary, and a check of the NLG strut inflation pressure and an adjustment if necessary. For some of these airplanes, this AD also requires a revision to the aircraft flight manual to incorporate an operating procedure to recover normal steering in the event of a steering failure. This AD results from a report of an incident where an airplane landed with the NLG turned 90 degrees from centerline. We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective November 30, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 30, 2005.

We must receive comments on this AD by January 23, 2006.

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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report that an Airbus Model A320 series airplane landed with the nose landing gear (NLG) turned 90 degrees from centerline. The airplane landed safely with no reported injuries, but the NLG tires were quickly deflated and torn apart, and both wheels were worn up to the wheel axle. A boroscopic inspection of the NLG shock absorber upper attachment area was carried out and indicated that the upper support was damaged, which was confirmed after the NLG was torn down. Two diagonally opposite lugs were found sheared-off and one additional lug found cracked.

The cause of the NLG turning 90 degrees has been determined to be a combination of two failures: a failure of the upper support lugs, which prevented the centering cams from keeping the NLG in the center position when the shock absorber was extended and the steering system was depressurized; and a failure of the braking and steering control unit (BSCU), which prevented the normal steering system from re-centering the NLG. The NLG upper support lugs failed due to cyclic loading of the anti-rotation device by a new pre-land steering check introduced with the BSCU standard enhanced manufacturing and maintainability (EMM) software logic, combined with high shock absorber pressure. The BSCU EMM failed due to the time it takes for the steering system to re-center the NLG on airplanes equipped with a steering system powered by the green hydraulic system. Airplanes with the steering system supplied by the yellow hydraulic system are capable of re-centering the nose landing gear even with broken upper support lugs.

Relevant Service Information

Airbus has issued Technical Note 957.1901/05, dated October 18, 2005, which describes procedures for performing a boroscope inspection of the NLG upper support (backplate) to detect ruptured anti-rotation lugs and repair if necessary.

Airbus has issued A318/A319/A320/A321 aircraft maintenance manual (AMM) Temporary Revision (TR) 12–001, dated November 13, 2005. The TR revises the data for Airbus A318/A319/A320/A321 AMM, Chapter 12, Subject 12–14–32, Revision 52, dated August 1, 2005, which describes procedures for checking the NLG strut inflation pressure and adjusting as applicable.

U.S. Type Certification of the Airplane

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.

FAA's Determination and Requirements of This AD

We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane. This AD requires an inspection to determine whether certain BSCUs are installed or have ever been installed. For airplanes on which certain BSCUs are installed or have ever been installed, this AD requires a check of the NLG strut inflation pressure and an adjustment if necessary; and a boroscope inspection of the NLG upper support (backplate) to detect ruptured anti-rotation lugs, and corrective action if necessary. We consider a boroscope inspection necessary because it is the most effective means to detect a ruptured anti-rotation lug. The corrective action includes replacing the NLG with a serviceable NLG if the lugs are completely ruptured or contacting the FAA to determine whether replacement or continuing inspection is necessary if any other damage is found.

For some of these airplanes on which certain BSCUs are installed or have ever been installed, this AD also requires a revision to the aircraft flight manual to incorporate an operating procedure to recover normal steering in event of a steering failure (*i.e.* when a ''L/G SHOCK ABSORBER FAULT'' electronic centralized aircraft monitoring (ECAM) caution is triggered at any time in flight and the ''WHEEL N/W STRG FAULT'' or ''WHEEL N.W. STEER FAULT'' ECAM cautions appear after landing gear extension).

We have worked in conjunction with the European Aviation Safety Authority (EASA) (which is the airworthiness authority for the European Union (EU) Member States) and the Direction Générale de l'Aviation Civile (DGAC) (which is the airworthiness authority for France) to develop appropriate actions that will address the identified unsafe condition. We have been advised that EASA and the DGAC are considering issuing airworthiness directives with requirements similar to the requirements of this AD.

Further, although this AD requires a one-time boroscope inspection, EASA and the DGAC have indicated that they do not plan to require the one-time boroscope inspection in their initial airworthiness directive. Rather, they have indicated that they plan to include the boroscope inspection with a longer compliance time in a follow-on airworthiness directive. EASA and the DGAC are aware of this difference, as well as the possibility that this AD may be issued earlier than their airworthiness directives on this subject.

Interim Action

We consider this AD interim action. The investigation into why the nose wheels were turned 90 degrees from the runway centerline is ongoing. Once we have received any further results of the investigation, we may consider additional rulemaking.

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–2005–23087; Directorate Identifier 2005–NM–225–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):

2005–24–06 Airbus: Amendment 39–14386. Docket No. FAA–2005–23087; Directorate Identifier 2005–NM–225–AD.

Effective Date

(a) This AD becomes effective November 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, and –231 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of an incident where an airplane landed with the nose landing gear (NLG) turned 90 degrees from centerline. We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

Compliance

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

Records Review

(f) Within 5 days after the effective date of this AD, perform a records review to determine whether the airplane is equipped with or has ever been equipped with a braking and steering control unit (BSCU) part number (P/N) E21327001 (standard L4.1, Airbus Modification 26965) or P/N E21327003 (standard L4.5, Airbus Modification 33376).

(g) For airplanes on which a records review required by paragraph (f) of this AD conclusively determines that the airplane is not and never has been equipped with BSCU P/N E21327001 or P/N E21327003, no further action is required by this AD.

Airplane Flight Manual (AFM) Revision, Inspection, and Corrective Action

(h) For airplanes that are not specified in paragraph (g) of this AD and which do not have Airbus Modification 31152 incorporated in production (i.e. applicable only to aircraft with steering powered by the green hydraulic system): Within 10 days after the effective date of this AD, revise the Limitation Section of the Airbus A318/319/320/321 Aircraft Flight Manual (AFM) to include the following information. This may be done by inserting a copy of this AD into the AFM:

The ECAM message, in case of a nose wheel steering failure, will be worded as follows:

—''WHEEL N/W STRG FAULT'' for aircraft with the FWC E3 and subsequent standards

—''WHEEL N.W. STEER FAULT'' for aircraft with the FWC E2 Standard.

• If the L/G SHOCK ABSORBER FAULT ECAM caution is triggered at any time in flight, and the WHEEL N/W STRG FAULT ECAM caution is triggered after the landing gear extension:

• When all landing gear doors are indicated closed on ECAM WHEEL page, reset the BSCU:

—A/SKID&N/W STRG—OFF THEN ON

■ If the WHEEL N/W STRG FAULT ECAM caution is no longer displayed, this indicates a successful nose wheel re-centering and steering recovery.

—Rearm the AUTO BRAKE, if necessary.

• If the WHEEL N/W STRG FAULT ECAM caution remains displayed, this indicates that the nose wheel steering remains lost, and that the nose wheels are not centered.

—During landing, delay nose wheel touchdown for as long as possible.

—Refer to the ECAM STATUS.

• If the WHEEL N/W STRG FAULT ECAM caution appears, without the L/G SHOCK ABSORBER FAULT ECAM caution:

—No specific crew action is requested by the WHEEL N/W STRG FAULT ECAM caution procedure.

—Refer to the ECAM STATUS.

Note 1: When a statement identical to that in paragraph (h) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(i) For airplanes that are not specified in paragraph (g) of this AD: At the times specified in paragraphs (i)(1) and (i)(2) of this AD, perform a boroscope inspection of the NLG upper support (backplate) to detect ruptured (completely broken) anti-rotation lugs, in accordance with Airbus Technical Note 957.1901/05, dated October 18, 2005; and check the NLG strut inflation pressure and adjust as applicable before further flight, according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Chapter 12, Subject 12–14–32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM), as revised by Airbus A318/A319/A320/A321 AMM Temporary Revision (TR) 12–001, dated November 13, 2005, is one approved method.

(1) Within 100 flight cycles following an electronic centralized aircraft monitoring (ECAM) caution ''L/G SHOCK ABSORBER FAULT'' associated with at least one of the centralized fault display system (CFDS) messages listed in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD.

(i) ''N L/G EXT PROX SNSR 24GA TGT POS.''

(ii) ''N L/G EXT PROX SNSR 25GA TGT POS.''

(iii) ''N L/G SHOCK ABSORBER FAULT 2526GM.''

(2) Within 90 days after the effective date of this AD unless accomplished previously in accordance with paragraph (i)(1) of this AD.

(j) If any ruptured (completely broken) upper support anti-rotation lugs are found during the inspections required by paragraph (i) of this AD, before further flight, replace the NLG with a serviceable NLG according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 AMM is one approved method. If any other damage to the upper support lugs is found, before further flight, check whether the NLG wheels can be turned by hand without the compression of the shock absorber (*i.e.*, without climbing the centering cam with the aircraft NLG on jacks) and the nose wheel steering disconnected from the electrical box 5GC. If the wheels can be turned, before further flight, replace the NLG with a serviceable NLG according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 AMM is one approved method. If the wheels cannot be turned, within 100 flight cycles accomplish corrective actions (which could include replacement or continuing inspections) in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

Alternative Methods of Compliance (AMOCs)

(k)(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

(l) None.

Material Incorporated by Reference

(m) You must use Airbus Technical Note 957.1901/05, dated October 18, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. (The document number of the Airbus technical note is only specified on page 1 of the document.) 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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 November 16, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23154 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23085; Directorate Identifier 2005–SW–25–AD; Amendment 39–14385; AD 2005–24–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Vertol Model 107–II Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Boeing Vertol (Boeing) Model 107–II helicopters. This action requires a visual and magnetic particle inspection of the quill shaft. This amendment is prompted by the discovery of cracks in a quill shaft during a routine inspection. The actions specified in this AD are intended to detect a fatigue crack in a quill shaft and prevent separation of the quill shaft between the aft transmission and the mix box assembly, loss of rotor synchronization, and subsequent loss of control of the helicopter.

DATES: Effective December 8, 2005.

Comments for inclusion in the Rules Docket must be received on or before January 23, 2006.

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; 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 AD from The Boeing Company, c/o Service Engineering, MC P01–10, P.O. Box 16858, Philadelphia, PA 19142–3227.

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft

Certification Office, Airframe and Propulsion Branch, 1600 Stewart Ave., suite 410, Westbury, New York 11590, telephone (516) 228–7325, fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Boeing Model 107–II helicopters. This action requires a visual and magnetic particle inspection of the quill shaft. This amendment is prompted by the discovery of cracks in a quill shaft during a routine 700-hour TIS clutch replacement in which a magnetic particle inspection of the quill shaft was done. Investigation shows that cracking on the ends of the spline teeth of the quill shaft, around the pinhole, occurs due to a wear step in the mating pinion gear splines. These cracked spline teeth can provide stress concentrations that may lead to fatigue cracks. This condition, if not corrected, could result in separation of the quill shaft between the aft transmission and the mix box assembly, loss of rotor synchronization, and subsequent loss of control of the helicopter.

We have reviewed Boeing Service Bulletin No. 107–63–1005, Revision 1, dated April 27, 2005, which describes procedures for inspections of quill shafts, part number (P/N) 107D2067, all dash numbers. The service bulletin also specifies rejecting any quill shaft with chipped or cracked teeth or any quill shaft with a crack and, although not required by this AD, specifies measuring and recording wear in the spline of the mating pinion gear, P/N 107D2215. Also, Boeing recommends replacing unairworthy quill shafts with airworthy quill shafts, P/N 107D2067–5. These part-numbered quill shafts have been improved with a shot-peen process. However, in this AD, we are only requiring that you replace any unairworthy quill shaft with an airworthy quill shaft with any approved P/N.

This AD is an interim action which covers initial inspections of the quill shaft. We plan to follow this AD with a superseding Notice of Proposed Rulemaking (NPRM) containing longer term requirements. The NPRM will propose adding the pinion gear wear measurements specified in the service bulletin and will propose adding recurring inspections of the quill shaft. Also, because we still have not determined the cause of the wear steps in the mating pinion gear splines, we may consider further rulemaking when the cause is ultimately determined.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to detect a fatigue crack in a quill shaft and prevent separation of the quill shaft between the aft transmission and the mix box assembly, loss of rotor synchronization, and subsequent loss of control of the helicopter. This AD requires the following for a helicopter with a quill shaft, P/N 107D2067, and a pinion gear, P/N 107D2215, installed:

- Remove the aft transmission assembly, separate the mix box assembly from the aft transmission, and remove the quill shaft from the pinion gear assembly;
- Visually inspect the external spline of the quill shaft for a chipped or cracked tooth around the pinhole; and
- Magnetic particle inspect the quill shaft for a crack.
- Replace any quill shaft that has a crack or a chipped or cracked tooth with an airworthy quill shaft before further flight.

If the pinion gear has 700 or more hours TIS, comply within 50 hours TIS, unless accomplished within the previous 350 hours TIS. If the pinion gear has less than 700 hours TIS, comply on or before reaching 750 hours TIS.

The short compliance time involved is required because these high-usage helicopters can quickly develop pinion gear wear that could lead to cracks in the quill shaft and adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions described previously are required within 50 hours TIS, a short time period of about 2 weeks based on the high usage rate of these model helicopters, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 7 helicopters. We estimate that each helicopter inspection will take about 17 work hours at an average labor rate of $65 per work hour. Required parts will cost $2,500 for each quill shaft. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $10,235, assuming one quill shaft is replaced on the fleet.

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 written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–23085; Directorate Identifier 2005–SW–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the 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 AD. 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 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.*

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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2005–24–05 Boeing Vertol (Boeing): Amendment 39–14385. Docket No. FAA–2005–23085; Directorate Identifier 2005–SW–25–AD.

Applicability: Model 107–II helicopters, all serial numbers, with a quill shaft, part number (P/N) 107D2067, all dash numbers, and a spiral bevel pinion gear (pinion gear), P/N 107D2215, installed, certificated in any category.

Compliance: Required as indicated.

To detect a fatigue crack in a quill shaft to prevent separation of the quill shaft between the aft transmission and the mix box assembly, loss of rotor synchronization, and subsequent loss of control of the helicopter, accomplish the following:

(a) For a helicopter with a pinion gear installed with the following hours time-in-service (TIS):

Pinion gear hours TIS	Compliance time
700 or more hours TIS	Within 50 hours TIS, unless accomplished within the previous 350 hours TIS.
Less than 700 hours TIS	On or before reaching 750 hours TIS.

(1) Remove the aft transmission assembly, separate the mix box assembly from the aft transmission, and remove the quill shaft from the pinion gear assembly;

(2) Visually inspect the external spline of the quill shaft for a chipped or cracked tooth around the pinhole; and

(3) Magnetic particle inspect the quill shaft for a crack.

(b) Before further flight, replace any quill shaft that has a crack or a chipped or cracked tooth with an airworthy quill shaft.

Note 1: Boeing Service Bulletin No. 107–63–1005, Revision 1, dated April 27, 2005, pertains to the subject of this AD.

Note 2: Replacement quill shafts manufactured by Kawasaki Heavy Industries (KHI) for use on their Model KV107–II helicopters must be approved by the geographic Aircraft Certification Office (ACO) on a case-by-case basis for installation on a Boeing Model 107–II helicopter.

(c) 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 Manager, New York ACO, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on December 8, 2005.

Issued in Fort Worth, Texas, on November 16, 2005.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–23156 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 2000N–1663]

RIN 0910–AA61

Investigational New Drugs: Export Requirements for Unapproved New Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on the exportation of investigational new drugs, including biological products. The final rule describes four different mechanisms for exporting an investigational new drug product. These provisions implement changes in FDA's export authority resulting from the FDA Export Reform and Enhancement Act of 1996 and also simplify the existing requirements for exports of investigational new drugs.

DATES: This rule is effective December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 19, 2002 (67 FR 41642), we (FDA) published a proposed rule to describe various options for exporting an investigational new drug, including a biological product. We issued the proposed rule to implement statutory changes resulting from the FDA Export Reform and Enhancement Act of 1996 (Pub. L. 104–134, as amended by Pub. L. 104–180) and to modify a pre-existing regulatory program for exporting investigational new drugs.

Under current § 312.110(b) (21 CFR 312.110(b)), any person who intends to export an unapproved new drug product for use in a clinical investigation must have either an investigational new drug application (IND) or submit a written request to us (FDA). The written request must provide sufficient information about the drug to satisfy us that the drug is appropriate for investigational use in humans, that the drug will be used for investigational purposes only, and that the drug may be legally used by the consignee in the importing country for the proposed investigational use (see § 312.110(b)(2)(i)). The request must also specify the quantity of the drug to be shipped and the frequency of expected shipments (id.). If we authorize exportation of the drug, we notify the government of the importing country (id.). Similar procedures exist for export requests made by foreign governments (see § 312.110(b)(2)(ii)). Section 312.110(b)(3) states that the requirements in paragraph (b) apply only where the drug is to be used for the purpose of a clinical investigation. Section 312.110(b)(4) states that the requirements in paragraph (b) do not apply to the exports of new drugs approved or authorized for export under

section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) or section 351(h)(1)(A) of the Public Health Service Act.

The program for exporting investigational new drugs is commonly known as the ''312 program'' because the regulation pertaining to the program is located in part 312 (21 CFR part 312). Between fiscal years 1994 and 1997, we received nearly 1,800 export requests under the 312 program. We found that very few requests (less than 1 percent) presented any public health concerns.

In 1996, the FDA Export Reform and Enhancement Act of 1996 became law. The FDA Export Reform and Enhancement Act created, among other things, two new provisions that affect the exportation of investigational drug products, including biological products. One provision, now section 802(b)(1)(A) of the act, authorizes exportation of an unapproved new drug to any country if that drug has valid marketing authorization by the appropriate authority in Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, the European Union (EU), or a country in the European Economic Area (EEA) and certain other requirements are met. These countries are listed in section 802(b)(1)(A)(i) and (b)(1)(A)(ii) of the act and are sometimes referred to as the ''listed countries.'' Currently, the EU countries are Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, and Iceland, Liechtenstein, and Norway. The list of countries in section 802(b)(1)(A)(i) of the act will expand automatically if any country accedes to the EU or becomes a member of the EEA. Exports under section 802(b)(1)(A) of the act can encompass exportation of an unapproved new drug product for investigational use in a foreign country if the exported drug product has marketing authorization in any listed country and the relevant statutory requirements are met. Exports under section 802(b)(1)(A) of the act do not require prior FDA authorization.

The second provision, now section 802(c) of the act, permits exportation of unapproved new drugs intended for investigational use to any listed country in accordance with the laws of that country. Exports of drugs to the listed countries under section 802(c) of the act do not require prior FDA authorization and are exempt from regulation under section 505(i) of the act (21 U.S.C. 355(i)).

All drug products exported under section 802 of the act are, however, subject to certain general requirements. Section 802(f) of the act prohibits export if the unapproved new drug:

- Is not manufactured, processed, packaged, and held in substantial conformity with current good manufacturing practice (CGMP) requirements;
- Is adulterated under certain provisions of section 501 of the act (21 U.S.C. 351);
- Does not comply with section 801(e)(1) of the act (21 U.S.C. 381(e)(1)), which requires that the exported product be intended for export, meet the foreign purchaser's specifications, not be in conflict with the laws in the importing country, be labeled on the outside of the shipping package that the products are intended for export, and not be sold or offered for sale in the United States;
- Is the subject of a determination by FDA that the probability of reimportation of the exported drug would present an imminent hazard to the public health and safety of the United States;
- Presents an imminent hazard to the public health of the foreign country;
- Fails to comply with labeling requirements in the country receiving the exported drug; or
- Is not promoted in accordance with labeling requirements in the importing country and, where applicable, in the listed country in which the drug has valid marketing authorization.

Section 802(g) of the act also imposes certain recordkeeping and notification obligations on drugs exported under section 802 of the act. In the **Federal Register** of December 19, 2001 (66 FR 65429), we issued a final rule on these recordkeeping and notification requirements, and the rule is codified at § 1.101 (21 CFR 1.101).

The new export provisions in section 802 of the act significantly reduced the number of requests under the 312 program from an annual average of 570 requests to 200 requests. This final rule amends § 312.110 to conform to the FDA Export Reform and Enhancement Act of 1996 and to modify the 312 program.

II. Comments on the Proposed Rule

A. What Did the Proposed Rule Cover? How Many Comments Did FDA Receive?

The proposed rule would amend § 312.110 to provide four mechanisms for exporting investigational new drugs, eliminate unnecessary language in the current regulation, and modify the export requirements for the 312 program. The proposed rule would not contain any new recordkeeping requirements because such records are already required under § 312.57 (if the foreign clinical trial is under an IND) or § 1.101.

We received eight comments on the proposed rule. The comments came from seven sources: A pharmaceutical trade association, four pharmaceutical companies, one consulting firm, and one university student. In general, six comments strongly supported the rule with few or no modifications. One comment opposed exports of investigational new drugs generally, and another comment sought clarification of one statutory provision and did not address the rule itself. We address most comments in greater detail below. (We do not discuss the comment seeking a clarification of the statute because it was not directly related to the rule.) To make it easier to identify comments and our responses, the word ''Comment,'' in parenthesis, will appear before the comment's description, and the word ''Response,'' in parenthesis, will appear before our response. We have also numbered each comment to identify them more easily. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received.

B. Can Investigational New Drugs Be Exported Under an IND?

Proposed § 312.110(b)(1) would represent the first mechanism for exporting an investigational new drug and would apply if the foreign clinical investigation is to be done under an IND. Proposed § 312.110(b)(1) would provide that an investigational new drug may be exported from the United States if an IND is in effect for the drug under § 312.40, the drug complies with the laws of the country to which it is being exported, and each person who receives the drug is an investigator who will use the drug in a study submitted to and allowed to proceed under the IND. Because this provision is not limited to particular countries, a drug that is the subject of an IND could be exported under the act to any country in the world if the export is for the purpose of conducting a clinical investigation in the importing foreign country. Exporters should be aware, however, that this provision, like all provisions in proposed § 312.110, pertain only to the requirements of the act. Other Federal laws, such as those relating to customs or controlled substances or barring

exports to specific countries, may restrict or prohibit an export even if it would be permitted under this rule.

We received no comments on this provision and have finalized it without change.

C. Can Investigational New Drugs Be Exported If They Have Marketing Authorization? Which Countries Must Provide That Marketing Authorization?

Proposed § 312.110(b)(2) would represent the second mechanism for investigational new drug exports and would implement section 802(b)(1) of the act with respect to exports of unapproved new drugs for investigational use (although section 802(b)(1) of the act has been in effect since April 1996). Under the proposal, if a drug product that is not approved for use in the United States has valid marketing authorization in Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or in any country in the EU or the EEA, the drug may be exported for any use, including investigational use, to any country, provided that the export complies with all applicable requirements pertaining to exports. Prior FDA approval to export the drug would not be required, nor would proposed § 312.110(b)(2) require the drug to be the subject of an IND. The exporter and the exported products, however, would have to comply with the foreign country's laws and with requirements in section 802(f) and (g) of the act. The proposal would also require compliance with the export notification and recordkeeping requirements § 1.101.

We received no comments on this provision and have finalized it without change.

However, regarding the export notification and recordkeeping requirements at § 1.101, we note that we received a petition for reconsideration that challenges, among other things, the recordkeeping requirement at § 1.101(b)(2). Section 1.101(b)(2) describes the records that may be kept to show that an export does not conflict with a foreign country's laws, as required by section 801(e)(1)(B) of the act. Section 1.101(b)(2) states that the records may consist of a letter from an appropriate foreign government agency stating that the product has marketing approval from the foreign government or does not conflict with the foreign country's laws or a notarized certification by a responsible company official in the United States that the product does not conflict with the foreign country's laws. In a letter dated July 22, 2002, we informed the petitioner that we would exercise enforcement discretion regarding the letter and certification described in § 1.101(b)(2), that parties must still comply with the statutory requirement in section 801(e)(1)(B) of the act, and that we would be evaluating whether to issue an advance notice of proposed rulemaking regarding the petitioner's issues (see Letter from Margaret M. Dotzel, Associate Commissioner for Policy, to Peter Barton Hutt, Covington & Burling, dated July 22, 2002; this letter can be found in FDA Docket No. 1998N–0583). We subsequently issued an advance notice of proposed rulemaking regarding the issues raised by the petitioner (see 69 FR 30842, June 1, 2004) and are continuing to evaluate the comments. We are continuing to exercise enforcement discretion regarding § 1.101(b)(2), but we remind would-be exporters that they must continue to comply with the statutory requirement in section 801(e)(1)(B) of the act and the remaining provisions in § 1.101.

D. Can Investigational New Drugs Be Exported Directly to Certain Countries Without FDA Approval?

Proposed § 312.110(b)(3), the third mechanism for investigational new drug exports, would implement section 802(c) of the act with respect to exports of unapproved new drugs for investigational use (although section 802(c) of the act has been in effect since April 1996). In brief, under proposed § 312.110(b)(3), if an unapproved drug is to be exported for investigational use to any listed country in accordance with the laws of that country, then no prior FDA authorization would be required. Exports of a drug for investigational use under proposed § 312.110(b)(3) would have to comply with the foreign country's laws and the applicable statutory requirements in section 802(c), (f), and (g) of the act. Proposed § 312.110(b)(3) would also require compliance with the relevant recordkeeping requirements at § 1.101.

Proposed § 312.110(b)(3) would add that investigational new drugs that are not under an IND and are exported under section 802(c) of the act do not have to bear a label stating, ''Caution: New Drug-Limited by Federal (or United States) law to investigational use.'' This proposed requirement reflected the fact that the label statement is required under section 505(i) of the act, and that, absent an IND, drugs exported under section 802(c) of the act are not subject to section 505(i) of the act.

The preamble to the proposed rule discussed our interpretation of section 802(c) of the act and the issue of ''transshipment.'' ''Transshipment'' refers to the practice of shipping a product to a country from which it will later be shipped to another country. We stated that we were aware that some firms have interpreted section 802(c) of the act as permitting transshipment to unlisted countries as long as the shipment went through a listed country (see 67 FR 41642 at 41643). (We knew about the firms' position on transshipment from comments we had received on a draft export guidance document that appeared in the **Federal Register** of June 12, 1998 (63 FR 32219).) We noted that section 802(c) of the act is silent with respect to transshipment, and a more reasonable interpretation is that the provision does not allow transshipments. We added that interpreting section 802(c) of the act to allow transshipment would be inconsistent with our traditional practice under § 312.110 and would presume, in the absence of any supporting language in the statute or its legislative history, that the listed countries may serve as mere transfer points or conduits for investigational new drugs and devices destined for unlisted countries (67 FR 41642 at 41643).

Nevertheless, because we knew that some firms insisted that section 802(c) of the act allows transshipment, the preamble to the proposed rule stated that we would interpret section 802(c) of the act as permitting investigational new drugs to be sent to principal investigators in a listed country who then use the investigational new drug in an unlisted country, provided that the principal investigator conducts the clinical investigations in accordance with the requirements of both the listed country and the unlisted country where the investigation is conducted. For example, if firm A exported an investigational new drug to principal investigator X in Norway (a listed country), we stated that we would interpret section 802(c) of the act as permitting exportation of the investigational new drug, without prior FDA authorization, as long as firm A and the exported drug met all other statutory conditions pertaining to the exportation. Principal investigator X could then administer the investigational new drug in an unlisted country so long as principal investigator X conducted the clinical investigation in accordance with Norwegian requirements and any requirements in the unlisted country where the investigational new drug is administered.

(Comment 1) Three comments disagreed with this limited transshipment position. The comments acknowledged that the law is subject to

various interpretations, but argued against allowing transshipment from listed countries to unlisted countries. The comments explained that a clinical investigator may have little ability to control how a drug is moved, stored, or used ''if he or she is not supported by the laws of the land'' and so expecting the clinical investigator ''to enforce the laws, regulations and practices of the listed country in the unlisted country (even assuming there are no contradictions between them) is, we believe, quite unrealistic and exposes the investigator, the sponsor and, not least, the patients to significant risks.'' Consequently, two comments recommended that we not allow transshipment from listed countries to unlisted countries. Another comment stated that we should not allow transshipment from listed countries to unlisted countries, but then stated that transshipment of investigational new drugs should be ''the responsibility of the sponsor alone.''

(Response) We have reconsidered our interpretation of section 802(c) of the act and agree that transshipment should not be permitted under section 802(c) of the act. Although our limited transshipment policy was intended to accommodate the industry, we agree with the pharmaceutical industry comments that a clinical investigator's ability to apply a listed country's laws and regulations in an unlisted country may be difficult at best. Therefore, we do not interpret section 802(c) of the act or § 312.110(b)(3) as allowing transshipment from listed countries to unlisted countries.

Furthermore, we do not agree that transshipment should be the sponsor's responsibility alone because that would mean that a sponsor could consider itself free to transship an investigational new drug regardless of our interpretation of section 802(c) of the act.

As for proposed § 312.110(b)(3) itself, we received no comments on the provision and have finalized it without change.

E. What Changes Are Being Made to the ''312 Program?''

Proposed § 312.110(b)(4) would represent the fourth mechanism for exporting an investigational new drug and would pertain to unapproved new drugs exported to any country for investigational use without an IND, and we expected that the provision would be used by persons who intend to export a drug that does not have valid marketing authorization from a listed country for investigational use to an unlisted country. Proposed § 312.110(b)(4) would modify the 312 program by eliminating the requirement of prior FDA authorization. The proposal would require a person seeking to export an unapproved new drug for investigational use without an IND to send a written certification to us. The certification would be submitted at the time the drug is first exported and would describe the drug being exported (i.e., trade name (if any), generic name, and dosage form), identify the country or countries to which it is being exported, and affirm that various conditions or criteria had been met, such as:

- The drug is intended for export;
- The drug is intended for investigational use in a foreign country;
- The drug meets the foreign purchaser's or consignee's specifications;
- The drug is not in conflict with the importing country's laws;
- The outer shipping package is labeled to show that the package is intended for export from the United States;
- The drug is not sold or offered for sale in the United States;
- The clinical investigation will be conducted in accordance with § 312.120;
- The drug is manufactured, processed, packaged, and held in substantial conformity with CGMPs;
- The drug is not adulterated within the meaning of section 501(a)(1), (a)(2)(A), (a)(3), (c), or (d) of the act;
- The drug does not present an imminent hazard to public health, either in the United States if the drug were to be reimported or in the foreign country;
- The drug is labeled in accordance with the foreign country's laws; and
- The drug is promoted in accordance with its labeling.

The preamble to the proposed rule explained that we were proposing to accept certifications because our experience with the 312 program indicated that very few investigational new drug exports under the existing program raise any public health concerns. The certification would eliminate the requirement of prior FDA authorization of a request to export a drug for investigational use (67 FR 41642 at 41644). Additionally, by conditioning exports to unlisted countries under the 312 program on the conduct of clinical investigations in accordance with § 312.120, the use of investigational new drugs under the 312 program would be subject to internationally recognized requirements for clinical investigations (id. at 41645). The proposal would also require the exporter of the investigational new drug to retain records showing its compliance with the provision's requirements.

(Comment 2) Several comments expressed strong support for streamlining the 312 program. For example, one comment called the proposal a ''bold but considered move'' that would reduce administrative burdens on FDA and sponsors without waiving any significant obligations.

Three comments questioned why proposed § 312.110(b)(4)(xii) would require the exporter to certify that the investigational new drug ''is promoted in accordance with its labeling.'' The comments said that the requirement is unnecessary because investigational new drugs are not the subject of promotion and requested that we clarify or delete the requirement.

(Response) We agree with the comments that investigational new drugs are not to be promoted, and we have deleted the language regarding promotion from § 312.110(b)(4).

However, one comment's claim that proposed § 312.110(b)(4) would reduce administrative burdens without waiving any significant obligations prompted us to consider whether a person exporting a drug under § 312.110(b)(4) should be able to export an investigational new drug in an emergency without satisfying certain criteria. For example, in recent years, we have seen growing concern over the possible use of biological, chemical, or other weapons in a terrorist attack. These concerns have prompted interest by some foreign countries in stockpiling drugs and biological products for possible use if such an attack occurs. We have also seen the sudden emergence of new diseases, such as Severe Acute Respiratory Syndrome (SARS), and can foresee situations where a foreign country might seek importation of an investigational new drug to respond to a sudden and immediate disease outbreak. In such situations, the need to stockpile drugs or to provide potentially helpful treatment quickly to a large number of patients may be incompatible with certain criteria in § 312.110(b)(4).

Therefore, the final rule includes a new § 312.110(b)(5) to address the exportation of investigational new drugs due to a national emergency in a foreign country. New § 312.110(b)(5) contemplates two different national emergency scenarios. The first scenario, at § 312.110(b)(5)(i), provides for exportation of an investigational new drug in a foreign country to be stored for possible use if and when a national emergency in that foreign country arises. Under § 312.110(b)(5)(i), a person may export the investigational new drug under § 312.110(b)(4) and may exclude

from its certification an affirmation with respect to any one or more of paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), and/or (b)(4)(ix), provided that he or she:

- Provides a written statement, under § 312.110(b)(5)(i)(A)(*1*), explaining why compliance with each such paragraph is not feasible or is contrary to the best interests of the individuals who may receive the investigational new drug;
- Provides a written statement from an authorized official of the importing country's government. The statement must attest that the official agrees with the exporter's statement made under § 312.110(b)(5)(i)(A)(*1*); explain that the drug is to be stockpiled solely for use of the importing country in a national emergency; and describe the potential national emergency that warrants exportation of the investigational new drug under this provision; and
- Provides a written statement showing that the Secretary of Health and Human Services (the Secretary), or his or her designee, agrees with the findings of the authorized official of the importing country's government.

We decided that in a national emergency, ''stockpiling'' scenario, exporters should be able to drop the affirmations in paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), and/or (b)(4)(ix) from their certifications if, due to the potential national emergency for which the drug is being stockpiled, compliance with that paragraph is infeasible or contrary to the best interests of the individuals who may receive the investigational new drug. For example, several foreign governments have asked for our help in exporting investigational vaccines to their countries to reduce their citizens' vulnerability to a certain pathogen. Vaccine production is very complex, so it is unlikely that a manufacturer could respond quickly to a large-scale national emergency in a foreign country. Thus, if we were to insist that all investigational vaccines exported in a national emergency scenario be ''intended for export'' (as otherwise required by § 312.110(b)(4)(i)), vaccines that had been intended for domestic use could not be exported to address a national emergency in a foreign country because those vaccines would not have been ''intended for export'' when they were first made. Providing for the deletion of the ''intended for export'' requirement in a national emergency, stockpiling scenario makes it possible to export products originally intended for domestic use to meet a more important foreign need.

In the national emergency, ''stockpiling'' scenario, exportation may not proceed without prior FDA authorization. We decided to require FDA authorization to ensure that exportation of a drug based on this scenario is limited to the requirements set out in § 312.110(b)(5)(i) and not used for other situations for which other regulatory requirements apply.

The second national emergency scenario is at § 312.110(b)(5)(ii). This provision would apply where the national emergency is both sudden and immediate. For example, § 312.110(b)(5)(ii) could be used when a bioterrorist attack has occurred in a foreign country and has created an immediate need to export an investigational new drug for use in the foreign country. It could also apply where the national emergency is imminent, but has not yet occurred. For example, § 312.110(b)(5)(ii) might be applicable where a foreign government has evidence showing that a particular novel disease outbreak is about to occur and that prompt administration of an investigational new drug is needed to treat or immunize its citizens before the disease assumes epidemic proportions. Thus, in these examples, the words ''sudden'' and ''immediate'' are meant to convey a sense that the national emergency resulted from unforeseen circumstances and that the exported drug is needed quickly in order to address the national emergency, and we expect § 312.110(b)(5)(ii) to be used in very rare circumstances. In other words, § 312.110(b)(5)(ii) should not be used in situations where a person simply wants to export a drug to address longstanding public health concerns (such as a disease which is and has been prevalent in the foreign country for years).

Under § 312.110(b)(5)(ii), a person may export an investigational new drug under § 312.110(b)(4) and exclude from its certification an affirmation with respect to any one or more of paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(v), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), (b)(4)(ix), and/or (b)(4)(xi), provided that he or she:

- Provides a written statement, under § 312.110(b)(5)(ii)(A)(*1*), explaining why compliance with each such paragraph is not feasible or is contrary to the best interests of the individuals who are expected to receive the investigational new drug; and
- Provides sufficient information from an authorized official of the importing country's government to enable the Secretary, or his or her designee, to decide whether a national emergency has developed or is developing in the importing country, whether the investigational new drug will be used solely for that national emergency, and whether prompt exportation of the investigational new drug is necessary.

We decided that, in the case of a sudden and immediate national emergency in a foreign country, the exporter's certification may omit an affirmation addressing paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(v), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), (b)(4)(ix) and/or (b)(4)(xi) if, due to the sudden and immediate national emergency, compliance with that paragraph or paragraphs are infeasible or contrary to the best interests of the individuals who may receive the investigational new drug. For example, it would not be necessary to insist that the exported drug be labeled in accordance with the foreign country's laws where the foreign country itself had agreed that compliance with its labeling requirements was unnecessary during the national emergency.

Additionally, in contrast to the ''stockpiling'' scenario in § 312.110(b)(5)(i), exportation to meet a sudden and immediate national emergency may not proceed until the Secretary has decided whether a national emergency has developed or is developing in the importing country, whether the investigational new drug will be used solely for that national emergency, and whether prompt exportation of the investigational new drug is necessary. We reiterate that, given its reference to a ''sudden and immediate'' national emergency, § 312.110(b)(5)(ii) should be very rarely used.

Persons who wish to obtain a written statement from the Secretary under § 312.110(b)(5)(i) or to request that the Secretary make the determinations under § 312.110(b)(5)(ii) should direct their requests to: Secretary's Operations Center, Office of Emergency Operations and Security Programs, Office of Public Health Emergency Preparedness, Office of the Secretary, Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201.

Requests may be also be sent by FAX: 202–619–7870 or by e-mail: *HHS.SOC@hhs.gov*.

To complement these changes, we have revised § 312.110(c)(4) to state that exportation is not allowed under § 312.110(b)(4) if the conditions underlying the certification or the statements submitted under § 312.110(b)(5) are no longer met.

(Comment 3) One comment appeared to inquire whether transshipment could occur under the 312 program. The comment suggested that transshipment should be allowed if the sponsor amended its ''certification'' requesting shipment of an investigational new drug

from either a listed or unlisted country to another unlisted country ''where the protocol is unchanged and all applicable laws are met.'' The comment added that only products under the sponsor's direct control would be permitted for transshipment.

(Response) The comment may have misinterpreted the rule. Exports of an investigational new drug to a listed country fall within section 802(c) of the act and § 312.110(b)(3), and no certification is required. Consequently, if an investigational new drug is exported to a listed country under section 802(c) of the act, there is no ''certification'' to amend, and, as our response to comment 1 of this document stated, we will not interpret section 802(c) of the act as allowing transshipment from a listed country to an unlisted country.

As for exports under the 312 program and § 312.110(b)(4), we concede that our proposed revision of the 312 program did not prohibit its use for exports to listed countries. However, if a sponsor decided to use § 312.110(b)(4) to export an investigational new drug to a listed country, it would create unnecessary work for itself because, under § 312.110(b)(3), it could export the investigational new drug to the listed country without providing any documentation to us.

If the comment sought to use § 312.110(b)(4) to export an investigational new drug to an unlisted country and then transship that drug to another unlisted country, we would agree that § 312.110(b)(4) could be used, but only if both unlisted countries are identified in the original certification to us. In other words, the original certification would have to state that the investigational new drug is being sent to one unlisted country and then shipped to another unlisted country. We do not intend to permit sponsors to use § 312.110(b)(4) to ship investigational new drugs to an unlisted country and, at some later, unspecified date, amend the certification in the manner described by the comment. We are concerned that allowing amendments to certifications that would change the country receiving the exported drug would enable an unscrupulous person to avoid several critical obligations, particularly those that are specific to the receiving country, such as ensuring that:

- The clinical investigation will be conducted in accordance with § 312.120;
- The drug meets the foreign purchaser's or consignee's specifications; and
- The drug does not present an imminent hazard to the public health in the foreign country.

Given these concerns, we decline to revise the rule to allow amended certifications under § 312.110(b)(4) that would enable sponsors to transship investigational new drugs without observing several important obligations in § 312.110(b)(4) itself.

F. Are There Any Restrictions on Investigational New Drug Exports?

Proposed § 312.110(c) would prohibit exports under certain conditions. For example, for drugs under an IND that are exported under proposed 312.110(b)(1), exportation would not be allowed if the IND is no longer in effect. For drugs exported under proposed § 312.110(b)(2), (b)(3), or (b)(4), exportation would not be allowed if the requisite conditions underlying or authorizing the exportation are no longer met. For all investigational new drugs exported under proposed § 312.110, exportation would not be allowed if the drug no longer complied with the laws of the importing country.

We received no comments on this provision. However, as explained in section II.E of this document, we have created a § 312.110(b)(5) to address exportation of investigational new drugs to meet national emergencies in a foreign country. This new provision establishes new conditions on the export requirements under § 312.110(b)(4) in such national emergencies. Consequently, we have revised § 312.110(c)(4) to state that exportation is not allowed under § 312.110(b)(4) if the conditions underlying the certification or the statements submitted under § 312.110(b)(5) are no longer met.

G. What Other Changes Did FDA Propose?

The proposed rule would also make several minor amendments to reflect or update statutory requirements and to redesignate paragraphs (to accommodate other proposed changes). In brief, the proposal would:

- Redesignate § 312.110(b)(4) as new § 312.110(d) to state that the export requirements in § 312.110 do not apply to insulin or to antibiotic drug products exported for investigational use. This provision would reflect section 802(i) of the act which provides that insulin and antibiotics may be exported in accordance with the export requirements in section 801(e)(1) of the act without complying with section 802 of the act.
- Eliminate a potentially confusing and incorrect reference to new drugs ''* * *approved or authorized for export under section 802 of the act * * * or section 351(h)(1)(A) of the Public Health Service Act'' because the FDA Export Reform and Enhancement Act eliminated most FDA approval requirements for exported drugs. As for section 351(h) of the Public Health Service Act, it pertains to exports of partially processed biological products that are: (1) Not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man; (2) not intended for sale in the United States; and (3) intended for further manufacture into final dosage form outside the United States. Thus, partially processed biological products exported under section 351(h) of the Public Health Service Act are not exported for investigational use, so they do not have to be mentioned in § 312.110. We also noted that the FDA Export Reform and Enhancement Act of 1996 revised and renumbered section 351(h) of the Public Health Service Act, and so the revised section no longer contains a paragraph (h)(1)(A) (see 67 FR 41642 at 41645).
- Amend the authority citation for part 312 to reflect additional statutory provisions, such as sections 801, 802, 803, and 903 of the act (21 U.S.C. 381, 382, 383, and 393), that affect investigational new drug exports, FDA's international activities, and rulemaking.
- Remove the text at § 312.110(b)(3) stating that the export requirements in § 312.110(b) apply only where the drug is to be used for the purpose of a clinical investigation. We proposed to delete this language because the proposed rule expressly refers to exports of investigational new drugs for use in clinical investigations.

We received no comments on these provisions or changes and have finalized them without change.

H. What Other Comments Did FDA Receive?

Several comments responded to specific questions we had presented in the preamble to the proposed rule or discussed other issues related to the export of investigational new drugs or the conduct of foreign clinical trials.

The preamble to the proposed rule noted that section 402(j) of the Public Health Service Act (42 U.S.C. 282(j)) directs the Secretary to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (67 FR 41642 at 41645). We invited comment on whether we should make available information on clinical trials involving investigational new drugs exported under proposed § 312.110(b)(4).

(Comment 4) Some comments opposed making information on drugs exported under proposed § 312.110(b)(4) publicly available. The comments argued that section 402(j) of the Public Health Service Act was intended to provide clinical trial information to American patients and that we had no legal authority to collect or disclose information on foreign clinical trials.

(Response) We agree with the comments that section 402(j) of the Public Health Service Act does not apply to exports under § 312.110(b)(4), but disagree as to the rationale. Section 402(j) of the Public Health Service Act refers to ''clinical trials'' without any express requirement that the clinical trials be conducted in the United States. However, we believe that this provision only applies to clinical trials conducted under an IND.

The Senate Committee on Labor and Human Resources' report on the ''Food and Drug Administration Modernization and Accountability Act of 1997'' describes the data bank as requiring sponsors of clinical trials to provide certain clinical trial information to the National Institutes of Health ''not later than 21 days after the approval by the FDA'' (see S. Rept. 105–43, ''Food and Drug Administration Modernization and Accountability Act of 1997,'' 105th Cong., 1st sess. at p. 99 (July 1, 1997)). The report apparently meant not later than 21 days after the IND goes into effect since, strictly speaking, FDA does not ''approve'' clinical trials or INDs. Rather, an IND goes into effect after 30 days if FDA does not notify the sponsor that the trials are subject to a clinical hold before then, or earlier than 30 days if FDA so notifies the sponsor that the trials may begin. Nonetheless, this statement strongly suggests that only trials that are conducted under an IND are to be included in the data bank. Therefore, based on this legislative history, we do not interpret section 402(j) of the Public Health Service Act as applying to exports under § 312.110(b)(4).

(Comment 5) One comment focused on the proposed rule's cross-references to statutory provisions. The comment said that the cross-references ''greatly complicate the reading and practical understanding of the regulation'' and suggested that we incorporate the statutory language directly into the rule.

(Response) We decline to amend the rule as suggested by the comment. While we understand that cross-references in a regulation can make it more difficult to read and to understand a particular requirement, there are several practical reasons for not inserting statutory language into a rule. First, several of the cited statutory provisions contain cross-references themselves. Section 802(f) of the act, which is mentioned in § 312.110(b)(2), (b)(3), (c)(2), and (c)(3), refers to certain adulteration provisions in section 501 of the act and to export requirements at section 801(e)(1) of the act. Thus, inserting statutory language into the rule would still result in cross-references to other statutory provisions. Second, if we were to use statutory language in the rule and if Congress amended that particular statute later, we would be obliged to begin new rulemaking to reflect the new statutory language, even if the revised statutory language had no significant impact on the rule itself. Otherwise, the regulation would be inconsistent with the act, and differences between the act and the regulatory language could result in needless disagreements or disputes. Third, inserting statutory language into a rule would make the rule much longer and have limited value because a firm should be conscious of both statutory and regulatory requirements. In general, we may issue a regulation to describe our interpretation of a particular statutory requirement and to create a consistent, enforceable obligation on affected parties and on the agency itself. If a particular statutory provision is self-executing or self-explanatory, we may feel that no regulation is necessary. Given these considerations, we decline to insert the statutory language into the rule.

(Comment 6) One comment opposed the rule entirely. The comment questioned why a foreign country would accept a drug that could not be used in the United States and alleged that companies exported investigational new drugs to avoid breaking U.S. law and to ''exploit people in other countries.'' The comment suggested that companies supporting the proposed rule ''should be investigated for unethical conduct.''

(Response) We disagree with the comment. The mechanisms for exporting an investigational new drug reflect statutory provisions in sections 505(i), 802(b)(1), and 802(c) of the act. As a result, contrary to the comment's assertion, firms exporting a drug for investigational use in a foreign country in accordance with this rule would be acting in compliance with the act. Given that fact, we have no basis for attributing an improper or unethical motive to those who would export such products or those who support this rulemaking.

(Comment 7) Several comments, in discussing their position against transshipment, recommended that we ''work diligently to approve unlisted countries and add them to the listed countries.''

(Response) We interpret the comments' suggestion of ''adding'' countries as referring to section 802(b)(1)(B) of the act, which states that the Secretary ''may designate an additional country to be included in the list of countries described in [section 802(b)(1)(A) of the act]'' if certain requirements are met. However, section 802(b)(1)(B) of the act also states that the authority to add countries to the list cannot be delegated. As a result, FDA has no authority or ability to add countries to the list.

We note that, since the FDA Export Reform and Enhancement Act became law in 1996, we have not received any substantive inquiries about adding a particular country to the group of listed countries. We are not aware of any similar inquiries to the Department of Health and Human Services.

III. Description of the Final Rule

The final rule is substantially similar to the proposed rule as it describes four mechanisms for exporting a drug, including a biological product, for investigational use. The four mechanisms are: (1) Exporting an investigational new drug under an IND, where the foreign clinical trial is covered in the IND; (2) exporting an investigational new drug that has valid marketing authorization from a ''listed country'' identified in section 802(b)(1)(A) of the act; (3) exporting an investigational new drug to a listed country; or (4) providing a certification to FDA and exporting the investigational new drug under a modified ''312 program.'' In the latter case, the final rule also identifies the certification criteria that must be followed if the export is to occur under the 312 program.

To recap the principal features of each export mechanism,

1. Section 312.110(b)(1) could be used where the foreign clinical trial is the subject of an IND.

2. Section 312.110(b)(2) could be used where the investigational new drug has received market authorization in any ''listed country'' and complies with the laws of the country to which it is being exported.

3. Section 312.110(b)(3) could be used when the investigational new drug is to be used in a clinical investigation in a ''listed country.''

4. Section 312.110(b)(4) could be used in situations not covered by § 312.110(b)(1), (b)(2), or (b)(3), and the requirements in § 312.110(b)(4) may be streamlined or modified in the event of

a national emergency in a foreign country (see § 312.110(b)(5)).

Please note that the export mechanisms are not mutually exclusive. For example, if a sponsor obtains an IND for a clinical investigation in a listed country, the sponsor is not obliged to export the investigational new drug under § 312.110(b)(2) or (b)(3).

The final rule also describes the conditions under which exportation may not occur. In general, these conditions are: (1) When the export no longer complies with the statutory requirements that would allow the drug to be exported; (2) when the conditions underlying the certification in the 312 program are no longer met; or (3) when the exported investigational new drug no longer complies with the foreign country's laws.

The final rule also states that insulin and antibiotics may be exported for investigational use in accordance with section 801(e)(1) of the act. The act specifically states that exports of insulin and antibiotics that are not approved for use by FDA are subject only to section 801(e)(1) of the act.

IV. Legal Authority

Section 505(i) of the act authorizes the agency to issue regulations pertaining to drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Under this authority, FDA has, for many years, approved the export of certain unapproved new drugs for investigational use in one or more foreign countries. Additionally, FDA can, under its general authority over investigational new drugs, terminate an IND under certain conditions.

The final rule is consistent with section 505(i) of the act insofar as § 312.110(b)(1) pertains to drugs that are the subject of an IND and § 312.110(b)(4) requires clinical investigations involving an investigational new drug without an IND that is exported to a foreign country to be conducted in accordance with § 312.120. Section 505(i) of the act also gives FDA express authority to issue regulations pertaining to investigational new drugs.

The final rule also implements section 802 of the act, which applies to unapproved drug products intended for export. Section 802(c) of the act applies to exports of unapproved drug products intended for investigational use. As stated earlier, section 802(c) of the act permits the export of a drug or device intended for investigational use to Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or any country in the EU or EEA in accordance with the laws of the importing country. No prior FDA authorization is required, and exports under section 802(c) of the act are also exempt from regulation under section 505(i) of the act. However, section 802(f) of the act prohibits export of a drug if certain conditions are not met (such as conformity with CGMPs, compliance with requirements contained in section 801(e)(1) of the act, and not being adulterated under certain provisions of section 501 of the act). Section 312.110(b)(3) pertains to exports of investigational new drugs to listed countries, under section 802(c) of the act. Additionally, § 312.110(b)(2) pertains to drugs exported under section 802(b) of the act and requires that such exports comply with section 802(f) of the act.

Authority to issue regulations to implement section 802 of the act, and for the efficient enforcement of the act generally, is contained in section 701(a) of the act (21 U.S.C. 371(a)). Section 903 of the act also provides general powers for implementing policies respecting FDA programs and activities. Thus, the final rule implements sections 505(i) and 802 of the act. Furthermore, it is also authorized under our rulemaking authorities at sections 505(i) and 701(a) of the act, and FDA's general authority at section 903 of the act.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) and (i), and 25.31(e) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Investigational New Drug Applications: Export Requirements for Unapproved New Drug Products.

Description: The final rule provides four different mechanisms for exporting an investigational new drug. First, an investigational new drug may be exported under an IND to any country if the IND covers the foreign clinical trial. Second, an investigational new drug that has received valid marketing authorization from a listed country may be exported for investigational use in any country subject to certain conditions (such as being in substantial conformity with CGMPs). Third, an investigational new drug may be exported to any listed country without prior FDA authorization for use in a clinical investigation, but would be subject to certain conditions (such as being in substantial conformity with CGMPs). Fourth, an investigational new drug may be exported provided that the sponsor submits a certification that the drug meets certain export criteria at the time the drug is exported. The final rule also requires persons exporting an investigational new drug under either the second, third, or fourth mechanisms to maintain records documenting their compliance with statutory and regulatory requirements.

Description of Respondents: Businesses.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.110(b)(2) and (b)(3)	370	1	370	3	1,110
312.110(b)(4)	200	1	200	1	200
Total					1,310

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
312.110(b)(4)	200	1	200	12	2,400
Total					2,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates are based on average export submissions in previous years and on information supplied by industry sources. For the recordkeeping requirement in § 312.110(b)(2) and (b)(3), FDA used the average annual number of export requests in previous years before enactment of the FDA Export Reform and Enhancement Act (approximately 570) and subtracted the number of export requests that it currently receives under the 312 program (200) to obtain an estimated 370 recordkeepers. These records, in general, would be subject to § 1.101 (66 FR 65429), and the estimated burden hours for the relevant parts of § 1.101 total 3 hours. Thus, the total record burden hours for § 312.110(b)(2) and (b)(3) would be 1,110 hours (370 records multiplied by 3 hours per record).

For § 312.110(b)(4), industry sources indicated that most firms already maintain records to demonstrate their compliance with export requirements, so the agency assigned a value of 1 hour for each response. The total recordkeeping burden for § 312.110(b)(4), therefore, is 200 hours (200 records multiplied by 1 hour per record).

Thus, the total recordkeeping burden would be 1,310 hours (1,110 + 200 = 1,310). Of this recordkeeping burden, 1,110 hours would be a statutory burden (because section 802(g) of the act requires persons exporting drugs under section 802 of the act to maintain records of alldrugs exported and the countries to which they were exported).

For the reporting requirement in § 312.110(b)(4), FDA's experience under the 312 program suggests that extremely few reports would be submitted. Assuming that 200 requests are received (the current number of requests under the 312 program) and that the reporting burden remains constant at approximately 12 hours per response, the total burden under § 312.110(b)(4) would be 2,400 hours. The reporting burden would be a regulatory (rather than statutory) burden.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''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 $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The agency has reviewed this final rule and determined that it is consistent with the regulatory philosophy and the principles identified in the Executive Order 12866 and these two statutes, as it will not result in an expenditure of $100 million or more in any one year. Because the rule raises novel policy issues, OMB has determined that this final rule is a significant regulatory action as defined under paragraph 4 of section 3(f) of Executive Order 12866.

The final rule facilitates exports of unapproved new drug products for use in clinical investigations in foreign countries by eliminating the need to submit requests for permission to export the drugs and to receive FDA authorization. This change reduces the cost to the affected small firms. Thus, the agency certifies that this final rule does not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Because the final rule does not impose any mandates on State, local, or tribal governments, or the private sector

that will result in an expenditure of $100 million or more in any one year, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act of 1995.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 382, 383, 393; 42 U.S.C. 262.

■ 2. Section 312.110 is amended by revising paragraph (b) and by adding paragraphs (c) and (d) to read as follows:

§ 312.110 Import and export requirements.

* * * * *

(b) *Exports.* An investigational new drug may be exported from the United States for use in a clinical investigation under any of the following conditions:

(1) An IND is in effect for the drug under § 312.40, the drug complies with the laws of the country to which it is being exported, and each person who receives the drug is an investigator in a study submitted to and allowed to proceed under the IND; or

(2) The drug has valid marketing authorization in Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or in any country in the European Union or the European Economic Area, and complies with the laws of the country to which it is being exported, section 802(b)(1)(A), (f), and (g) of the act, and § 1.101 of this chapter; or

(3) The drug is being exported to Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or to any country in the European Union or the European Economic Area, and complies with the laws of the country to which it is being exported, the applicable provisions of section 802(c), (f), and (g) of the act, and § 1.101 of this chapter. Drugs exported under this paragraph that are not the subject of an IND are exempt from the label requirement in § 312.6(a); or

(4) Except as provided in paragraph (b)(5) of this section, the person exporting the drug sends a written certification to the Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, at the time the drug is first exported and maintains records documenting compliance with this paragraph. The certification shall describe the drug that is to be exported (i.e., trade name (if any), generic name, and dosage form), identify the country or countries to which the drug is to be exported, and affirm that:

(i) The drug is intended for export;

(ii) The drug is intended for investigational use in a foreign country;

(iii) The drug meets the foreign purchaser's or consignee's specifications;

(iv) The drug is not in conflict with the importing country's laws;

(v) The outer shipping package is labeled to show that the package is intended for export from the United States;

(vi) The drug is not sold or offered for sale in the United States;

(vii) The clinical investigation will be conducted in accordance with § 312.120;

(viii) The drug is manufactured, processed, packaged, and held in substantial conformity with current good manufacturing practices;

(ix) The drug is not adulterated within the meaning of section 501(a)(1), (a)(2)(A), (a)(3), (c), or (d) of the act;

(x) The drug does not present an imminent hazard to public health, either in the United States, if the drug were to be reimported, or in the foreign country; and

(xi) The drug is labeled in accordance with the foreign country's laws.

(5) In the event of a national emergency in a foreign country, where the national emergency necessitates exportation of an investigational new drug, the requirements in paragraph (b)(4) of this section apply as follows:

(i) *Situations where the investigational new drug is to be stockpiled in anticipation of a national emergency.* There may be instances where exportation of an investigational new drug is needed so that the drug may be stockpiled and made available for use by the importing country if and when a national emergency arises. In such cases:

(A) A person may export an investigational new drug under paragraph (b)(4) of this section without making an affirmation with respect to any one or more of paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), and/or (b)(4)(ix) of this section, provided that he or she:

(*1*) Provides a written statement explaining why compliance with each such paragraph is not feasible or is contrary to the best interests of the individuals who may receive the investigational new drug;

(*2*) Provides a written statement from an authorized official of the importing country's government. The statement must attest that the official agrees with the exporter's statement made under paragraph (b)(5)(i)(A)(*1*) of this section; explain that the drug is to be stockpiled solely for use of the importing country in a national emergency; and describe the potential national emergency that warrants exportation of the investigational new drug under this provision; and

(*3*) Provides a written statement showing that the Secretary of Health and Human Services (the Secretary), or his or her designee, agrees with the findings of the authorized official of the importing country's government. Persons who wish to obtain a written statement from the Secretary should direct their requests to Secretary's Operations Center, Office of Emergency Operations and Security Programs, Office of Public Health Emergency Preparedness, Office of the Secretary, Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201. Requests may be also be sent by FAX: 202–619–7870 or by e-mail: *HHS.SOC@hhs.gov*.

(B) Exportation may not proceed until FDA has authorized exportation of the investigational new drug. FDA may deny authorization if the statements provided under paragraphs (b)(5)(i)(A)(*1*) or (b)(5)(i)(A)(*2*) of this section are inadequate or if exportation is contrary to public health.

(ii) *Situations where the investigational new drug is to be used for a sudden and immediate national emergency.* There may be instances where exportation of an investigational new drug is needed so that the drug may be used in a sudden and immediate national emergency that has developed or is developing. In such cases:

(A) A person may export an investigational new drug under paragraph (b)(4) of this section without making an affirmation with respect to any one or more of paragraphs (b)(4)(i), (b)(4)(iv), (b)(4)(v), (b)(4)(vi), (b)(4)(vii), (b)(4)(viii), (b)(4)(ix), and/or (b)(4)(xi), provided that he or she:

(*1*) Provides a written statement explaining why compliance with each such paragraph is not feasible or is contrary to the best interests of the individuals who are expected to receive the investigational new drug and

(*2*) Provides sufficient information from an authorized official of the importing country's government to enable the Secretary, or his or her

designee, to decide whether a national emergency has developed or is developing in the importing country, whether the investigational new drug will be used solely for that national emergency, and whether prompt exportation of the investigational new drug is necessary. Persons who wish to obtain a determination from the Secretary should direct their requests to Secretary's Operations Center, Office of Emergency Operations and Security Programs, Office of Public Health Emergency Preparedness, Office of the Secretary, Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201. Requests may be also be sent by FAX: 202–619–7870 or by e-mail: *HHS.SOC@hhs.gov*.

(B) Exportation may proceed without prior FDA authorization.

(c) *Limitations*. Exportation under paragraph (b) of this section may not occur if:

(1) For drugs exported under paragraph (b)(1) of this section, the IND pertaining to the clinical investigation is no longer in effect;

(2) For drugs exported under paragraph (b)(2) of this section, the requirements in section 802(b)(1), (f), or (g) of the act are no longer met;

(3) For drugs exported under paragraph (b)(3) of this section, the requirements in section 802(c), (f), or (g) of the act are no longer met;

(4) For drugs exported under paragraph (b)(4) of this section, the conditions underlying the certification or the statements submitted under paragraph (b)(5) of this section are no longer met; or

(5) For any investigational new drugs under this section, the drug no longer complies with the laws of the importing country.

(d) *Insulin and antibiotics*. New insulin and antibiotic drug products may be exported for investigational use in accordance with section 801(e)(1) of the act without complying with this section.

Dated: November 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 05–154]

RIN 1625–AA87

Security Zone; St. John's River, Jacksonville, FL to Ribault Bay

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone around foreign naval submarines in transit within the area between 12 nautical miles seaward from the baseline at the mouth of the St. John's River to Ribault Bay. The security zone includes all waters within 500 yards in any direction of the submarine. This rule prohibits entry into the security zone without the permission of the Captain of the Port (COTP) Jacksonville or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine. This security zone is needed to ensure public safety and to prevent sabotage or terrorist acts against the submarine.

DATES: This rule is effective from 8 a.m. on November 9, 2005, until 11:59 p.m. on December 1, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [COTP Jacksonville 05–154] and are available for inspection and copying at Coast Guard Sector Jacksonville Prevention Department, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Kira Peterson at Coast Guard Sector Jacksonville Prevention Department, Florida telephone: (904) 232–2640, ext. 108.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delay the rule's effective date, is contrary to the public interest because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard vessels in the vicinity of this zone to advise mariners of the restrictions.

Background and Purpose

This rule is needed to protect foreign navy submarines from damage or injury from sabotage or other subversive acts, accidents or other causes of a similar nature, or to secure the observance of rights and obligations of the United States. Although this rule is effective from 8 a.m. on November 9, 2005, until 11:59 p.m. on December 1, 2005, the Coast Guard will only enforce this rule when a foreign navy submarine is transiting within the area between 12 nautical miles seaward from the baseline at the mouth of the St. John's River to Ribault Bay. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, Florida, or his designated representative. The temporary security zone encompasses all waters within 500 yards around the foreign naval submarine. Vessels or persons authorized to enter the zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under the order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulation will only be enforced for a short period of time within a 22-day window, during vessel transits, and the impact on routine navigation is expected to be minimal. Vessels may still transit safely around the zone and, upon permission of the Captain of the Port or his designated representative, may transit at minimum safe speed through that portion of the security zone between 100 and 500 yards from the submarine.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR

1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T07–154 is added to read as follows:

§ 165.T07–154 Security Zone; St. John's River, Jacksonville, FL to Ribault Bay.

(a) *Regulated area.* The Coast Guard is establishing a temporary moving security zone for a foreign navy submarine within the area 12 nautical miles seaward from the baseline at the mouth of the St. John's River to Ribault Bay. The temporary security zone encompasses all waters within 500 yards in any direction around a foreign navy submarine transiting within the area between 12 nautical miles seaward of the sea buoy at the entrance to the St. John's River to Ribault Bay.

(b) *Definitions.* The following definitions apply to this section:

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement of the regulated navigation areas and security zones.

Minimum Safe Speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, must comply with all orders issued by the COTP or his designated representative, and must not proceed any closer than 100 yards, in any direction, to the submarine.

(d) *Dates.* This section is effective from 8 a.m. on November 9, 2005, until 11:59 p.m. on December 1, 2005.

Dated: November 9, 2005.

David L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 05–23236 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska–04–003]

RIN 1625–AA00

Safety Zone; Bering Sea, Aleutian Islands, Unalaska Island, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change of effective period.

SUMMARY: The Coast Guard is extending the effective period of the safety zone in the Bering Sea, Unalaska Island, Alaska. The zone is needed to facilitate safe salvage operations related to the grounding of the merchant vessel (M/V) SELENDANG AYU. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or their on-scene representative. The intended effect of the proposed safety zone is to mitigate safety risks to salvage personnel.

DATES: The effective period of § 165.T17–010 is extended from November 30, 2005 through October 31, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Meredith Gillman, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after its publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to prevent unauthorized vessel traffic from hindering salvage operations.

The Coast Guard will terminate the zone when salvage operations are complete and the area adjacent to the grounded vessel is considered safe to vessel traffic.

Background and Purpose

The M/V SELENDANG AYU ran aground at a position of 53.634° N, 167.125° W on December 9, 2004. The vessel then broke in half and discharged its fuel oil into the water. A marine salvor is removing sections of the wreck from the bow and stern sections of the grounded vessel, as well as from the adjacent shoreline. The safety zone is necessary to prevent unauthorized vessels from impeding salvage operations.

Discussion of Rule

The Unified Command, which is responding to the grounding of the M/V Selendang Ayu, identified the safety zone in the area where subsequent salvage operations will be taking place. This area is defined by a circle centered at 53 degrees, 38 minutes North; 167 degrees, 7 minutes, 20 seconds West with a radius of 750 yards. All coordinates reference Datum: NAD 1983.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the area defined by a circle centered at 53 degrees, 38 minutes North; 167 degrees, 7 minutes, 20 seconds West with a radius of 750 yards.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic transiting from the north to south side of Unalaska Island can pass safely around the safety zone. We will terminate the safety zone once salvage operations are complete and the area adjacent to the grounded vessel is considered safe for vessel traffic. The safety zone is not located in a navigable channel.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From November 30, 2005 to October 31, 2006, amend temporary § 165.T17–010 to read as follows:

§ 165.T17–010 Safety Zone; Bering Sea, Aleutian Islands, Unalaska Island, AK.

(a) *Description.* This safety zone is defined by a circle centered at 53 degrees, 38 minutes North; 167 degrees, 7 minutes, 20 seconds West with a radius of 750 yards. All coordinates reference Datum: NAD 1983.

(b) *Enforcement period.* The safety zone in this section will be enforced from November 30, 2005 through October 31, 2006.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port or his on-scene representative.

Dated: November 10, 2005.

M.R. DeVries,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 05–23235 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 02–1]

RIN 3014–AA26

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Public Rights-of-Way

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of availability of draft guidelines.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its Web site for public review draft guidelines which address accessibility in the public right-of-way. The draft guidelines are under consideration by the Board. The purpose of placing the draft guidelines in the docket is to facilitate gathering of additional information for the regulatory assessment and the preparation of technical assistance materials to accompany a future rule. The Board is not seeking comments on the draft guidelines. The Board will issue a notice of proposed rulemaking at a future date and will solicit comments at that time, prior to issuing a final rule.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0025 (voice); (202) 272–0082 (TTY). Electronic mail address: *windley@access-board.gov.*

SUPPLEMENTARY INFORMATION: In 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) established the Public Rights-of-Way Access Advisory Committee (Committee) to make recommendations on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Committee was comprised of representatives from disability organizations, public works departments, transportation and traffic engineering groups, design professionals and civil engineers, pedestrian and bicycle organizations, Federal agencies, and standard-setting bodies. The Committee met on five occasions between December 1999 and January 2001. On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community.'' The Committee's report provided recommendations on access to sidewalks, street crossings, and other related pedestrian facilities and addressed various issues and design constraints specific to public rights-of-way. The report is available on the Access Board's Web site at *http://www.access-board.gov/prowac/commrept/index.htm* or can be ordered by calling the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The report is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, braille, large print, or ASCII disk).

The Access Board convened an ad hoc committee of Board members to review the Committee's recommendations. After reviewing the report in detail, the Board's ad hoc committee prepared recommendations for guidelines addressing accessibility in the public right-of-way. On June 17, 2002, the Board made the recommendations of the ad hoc committee available for public comment and review by notice in the **Federal Register** (67 FR 41206).

Over 1,400 comments were received from the public in response to the publication of the draft. Of this total, almost 900 comments were from persons with disabilities and groups representing them; the great preponderance of comments in this category came from people who indicated that they were blind or had low vision. Respondents from the transportation industry, including design engineers and consultants, submitted slightly over 200 comments. Another 100 were received from State and local government administrative agencies. Comments are posted on the Board's Web site at *http://www.access-board.gov/prowac/comments/index.htm.* Further discussion of the comments received is available in the supplementary information accompanying the draft guidelines.

The members of the Board's ad hoc committee subsequently reviewed and considered the comments received in response to the 2002 **Federal Register** notice. The draft guidelines made available today on the Board's Web site are the result of those deliberations. The Access Board is making the draft guidelines available in order to facilitate the gathering of additional information for a regulatory assessment prior to publishing a notice of proposed rulemaking and to assist in the development of technical assistance materials. The Board is not soliciting comments on the draft guidelines. The Board will solicit comments when a proposed rule is issued in conjunction with the regulatory assessment. The draft guidelines along with supplementary information have been placed in the rulemaking docket (Docket No. 02–1) for public review. The draft guidelines and supplementary information are also available on the Access Board's Web site at *http://www.access-board.gov/prowac/draft.htm.* You may also obtain a copy of the draft guidelines and supplementary information by contacting the Access Board at (202) 272–0080. Persons using a TTY should call (202) 272–0082. The documents are available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, braille, large print, or ASCII disk).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 05–23161 Filed 11–22–05; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0006; FRL–7998–4]

Revisions to the California State Implementation Plan, Imperial and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that are

administrative and address changes for clarity and consistency.

DATES: This rule is effective on January 23, 2006 without further notice, unless EPA receives adverse comments by December 23, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [DOCKET NUMBER], by one of the following methods:

1. Agency Web site: *http://docket.epa.gov/rmepub/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

3. E-mail: *steckel.andrew@epa.gov.*

4. Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are ''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and final action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	101	Definitions	01/11/05	04/26/05
SBCAPCD	102	Definitions	01/20/05	04/26/05

On June 3, 2005, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved versions of these rules into the SIP on the dates listed: ICAPCD Rule 101 on March 7, 2003 and SBCAPCD Rule 102 on July 23, 2004.

C. What is the purpose of the submitted rule revisions?

Imperial County Rule 101 is amended by adding new definitions, revising some existing definitions, and deleting obsolete definitions. New and revised definitions for Rule 424, Architectural Coatings, are added into Rule 101.

Santa Barbara Rule 102 is amended by revising the definition of reactive organic compounds to exempt methyl acetate and perchloroethylene.

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

EPA's technical support document has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 23, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public

that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 23, 2006. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 26, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(336)(i)(C) and (D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(336) * * *

(i) * * *

(C) Imperial County Air Pollution Control District.

(*1*) Rule 101, adopted on January 11, 2005.

(D) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102, adopted on January 20, 2005.

* * * * *

[FR Doc. 05–23090 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0016; FRL–8000–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Permits by Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On September 28, 2005 (70 FR 56566), EPA published a direct final rule to approve a State Implementation Plan (SIP) revision for the State of Texas. This action removed a provision from the Texas SIP which provided public notice for concrete batch plants which were constructed under a permit

by rule (PBR). The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by October 28, 2005, EPA would publish a timely withdrawal in the **Federal Register.** EPA subsequently received a timely adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comment in a subsequent final action based on the parallel proposal also published on September 28, 2005 (70 FR 56612). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on September 28, 2005 (70 FR 56566) is withdrawn as of November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: November 15, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 05–23216 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0175; FRL–7722–6]

Tralkoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tralkoxydim in or on barley grain, barley hay, barley straw, wheat grain, and wheat hay, wheat forage, and wheat straw. Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective November 23, 2005. Objections and requests for hearings must be received on or before January 23, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0175. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 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.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address:*Tompkins.Jim@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 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

In the **Federal Register** of June 22, 2005 (70 FR 36162) (FRL–7715–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F4631) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC, 27419–8300. The petition requested that 40 CFR 180.548 be amended by establishing a tolerance for residues of the herbicide tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on barley grain, barley hay, wheat grain, and wheat hay at 0.02 parts per million (ppm) and barley straw, wheat forage, and wheat straw at 0.05 ppm. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant.

Public comments were received from B. Sachau who objected to the ''sale or marketing'' of this product. She asserted that the registrant's statement in the notice of filing that ''it is unlikely'' that secondary residues would occur in animal commodities is not a ''strong enough'' standard. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to tralkoxydim, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has determined that there is no reasonable expectation of dietary risk due to residues of tralkoxydim occurring in meat, milk, poultry, or eggs

from its use on wheat and barley based on low levels of residues in wheat and barley and risk assessments that were conducted by the Agency. EPA has responded to B. Sachau's generalized comments on numerous previous occasions (see 70 FR 1349, 1354 (January 7, 2005); 69 FR 63083, 63096 (October 29, 2004).

Time limited tolerances for these commodities were previously established in the **Federal Register** of August 13, 2003 (68 FR 48299) (FRL–7315–9). The tolerances expired on May 1, 2005. The tolerances were time limited because a second species carcinogenicity study needed to be submitted and reviewed. The study was submitted and reviewed and is discussed below.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of tralkoxydim on barley grain, barley hay, wheat grain, and wheat hay at 0.02 parts per million (ppm) and barley straw, wheat forage, and wheat straw at 0.05 ppm.

EPA's assessment of exposures and risks associated with establishing the tolerance was discussed in the **Federal Register** final rule of December 16, 1998 (63 FR 69194) (FRL–6048–4).

The only new data that have been submitted since this prior action are data from the second species carcinogenicity study. Based on this study, EPA downgraded the cancer classification of tralkoxydim from ''likely human carcinogen'' to ''suggestive evidence of carcinogenicity.'' This classification was based on the occurrence of benign testicular tumors at the high dose in male rats and equivocal evidence of carcinogenicity in female hamsters. In light of the prior cancer classification, EPA had previously conducted a quantitative cancer risk assessment for tralkoxydim and concluded that the cancer risk was negligible. Given that the new data indicate that tralkoxydim is less likely to be carcinogenic, EPA finds that its earlier cancer risk assessment more than adequately demonstrates that tralkoxydim poses a negligible cancer risk. Accordingly, in reliance on its previous risk assessment, as presented in the December 16, 1998 notice, and the new cancer study, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to tralkoxydim residues.

IV. Conclusion

Therefore, the tolerance is established for residues of tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on the raw agricultural commodity barley grain, barley hay, wheat grain, and wheat hay at 0.02 ppm and barley straw, wheat forage, and wheat straw at 0.05 ppm.

V. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0175 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 23, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0175, to: Public Information

and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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'' is 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 the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.548 is amended by revising paragraph (a) to read as follows:

§ 180.548 Tralkoxydim; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, tralkoxydim, 2-Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-

(2,4,6-trimethylphenyl)-(9Cl) in or on the raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.02
Barley, hay	0.02
Barley, straw	0.05
Wheat, forage	0.05
Wheat, grain	0.02
Wheat, hay	0.02
Wheat, straw	0.05

* * * * *

[FR Doc. 05–23106 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8001–3]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Indiana Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on June 30, 2005 at 70 FR 37726 and provided for public comment. The public comment period ended on August 1, 2005. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this proposed final action.

DATES: This final authorization will be effective on November 23, 2005.

ADDRESSES: You can view and copy Indiana's application from 9 a.m. to 4 p.m. at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, 46204–2210, contact Steve Mojonnier (317) 233–1655, or Lynn West (317) 232–3593; and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West JacksonBoulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION: On June 30, 2005, U.S. EPA published a proposed rule proposing to grant Indiana authorization for changes to its Resource Conservation and Recovery Act program, listed in Section F of that notice, which was subject to public comment. No comments were received. We hereby determine that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this notice) instead of the equivalent Federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports.
2. Enforce RCRA requirements and suspend or revoke permits.
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Indiana is being authorized by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On June 30, 2005 (70 FR 37726), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Indiana's hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal. EPA found Indiana's RCRA program to be satisfactory.

E. What Has Indiana Previously Been Authorized For?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001 effective January 4, 2001, (66 FR 733); December 6, 2001, effective December 6, 2001 (66 FR 63331); and October 29, 2004, effective October 29, 2004 (69 FR 63100).

F. What Changes Are We Authorizing With Today's Action?

On August 30, 2004, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We

now make a final decision, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes:

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules Checklist 194.	October 3, 2001, 66 FR 50332.	329 IAC 3.1–6–1 Effective February 13, 2004.
Inorganic Chemical Manufacturing Wastes; Identification and Listing Checklist 195 as amended Checklist 195.1.	November 20, 2001, 66 FR 58258. April 9, 2002, 67 FR 17119	329 IAC 3.1–6–1; 3.1–6–2(19); 3.1–7–1; 3.1–12–1, Effective February 13, 2004.
CAMU Amendments Checklist 196	January 22, 2002, 67 FR 2962.	329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–9–1; 3.1–9–2(16), Effective February 13, 2004.
Hazardous Air Pollutant Standards for Combustors: Interim Standards Checklist 197.	February 13, 2002, 67 FR 6792.	329 IAC 3.1–9–1; 3.1–11–1; 3.1–13–1, Effective February 13, 2004.
Hazardous Air Pollutant Standards for Combustors; Corrections Checklist 198.	February 14, 2002, 67 FR 6968.	329 IAC 3.1–11–1; 3.1–13–1, Effective February 13, 2004.
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste Checklist 199.	March 13, 2002, 67 FR 11251.	329 IAC 3.1–6–1; 3.1–6–2(2), Effective February 13, 2004.

G. Where Are the Revised State Rules Different From the Federal Rules?

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1–12–2 and 3.1–13–2(4). EPA will continue to implement those requirements. This action involves no more stringent or broader in scope State requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in ''Indian Country'', as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Indiana;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Indiana.

J. What Is Codification and Is EPA Codifying Indiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Indiana's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian Tribes, or

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.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

12. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) To the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 9, 2005.

Margaret M. Guerriero,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23214 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2932; MB Docket No. 04–328; RM–11046, RM–11235]

Radio Broadcasting Services; Americus and Oglethorpe, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Southern Broadcasting Companies and Radio Georgia, Inc. directed at the *Report and Order* in this proceeding, which allotted Channel 295A at Americus, Georgia. *See* 70 FR 41630, published July 20, 2005. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 04–328, adopted November 4, 2005, and released November 7, 2005. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned Petition for Reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22844 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2901, MM Docket No. 01–107, RM–10057]

Radio Broadcasting Services; Hemlock and Mount Pleasant, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The staff denied a petition for reconsideration filed by MacDonald Broadcasting Company of a decision in this proceeding, reallotting and changing the community of license for Station WCEN–FM, Channel 233C1, from Mount Pleasant, MI, to Hemlock MI. The staff determined that the reconsideration petition did not demonstrate any errors of fact or law. Specifically, because Hemlock is not located inside the Saginaw, MI, Urbanized Area and because the station will not place a city-grade signal over 50 percent or more of that Urbanized Area, a Tuck showing was not required to demonstrate that Hemlock is sufficiently independent of the Saginaw Urbanized Area to warrant a first local service preference. *See* 66 FR 55598 (November 2, 2001).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 01–107, adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was denied.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22836 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2935; MB Docket No. 02–123, RM–10445]

Radio Broadcasting Services; Terrebonne, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Hunt Broadcasting, Inc., allots Channel 293C2 at Terrebonne, Oregon, as the community's first local FM service. Channel 293C2 can be allotted to Terrebonne, Oregon, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 km (12.3 miles) southeast of Terrebonne. The coordinates for Channel 293C2 at Terrebonne, Oregon, are 44–14–50 North Latitude and 120–58–39 West Longitude.

DATES: Effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 02–123, adopted November 4, 2005, and released November 7, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Terrebonne, Channel 293C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22986 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2940]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted November 9, 2005, and released November 10, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCASTING SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 238C3 and adding Channel 238C2 at Thomasville.

■ 3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 244A and adding Channel 244C3 at Ozark.

■ 4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 297A and adding Channel 297C1 at Las Animas.

■ 5. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 228A and adding Channel 228C3 at Belle Glade.

■ 6. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 221A and adding Channel 221C3 at St. Maries; and removing Channel 222C2 and adding Channel 222C3 at Victor.

■ 7. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 279C and adding Channel 279C0 at Glenwood.

■ 8. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 228A and adding Channel 228C1 at Burdett; removing

Channel 249A and adding Channel 249C3 at Burlington; by removing Channel 250C and adding Channel 250C0 at Wichita; and by removing Channel 285A and adding Channel 284C1 at Ness City.

■ 9. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 293A and adding Channel 294A at Williamstown.

■ 10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 253A and adding Channel 253C3 at Windsor.

■ 11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 222C and adding Channel 222C0 at Miles City.

■ 12. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 257C2 and adding Channel 257C1 at Overton.

■ 13. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 292C1 and adding Channel 292C at Lovelock.

■ 14. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 279C and adding Channel 279C0 at Grants.

■ 15. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 260C and adding Channel 260C0 at Albany; by removing Channel 225A and adding Channel 225C3 at Coos Bay; and by removing Channel 227C and adding Channel 227C0 at Springfield-Eugene.

■ 16. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 228A and adding Channel 229C3 at Pine Ridge.

■ 17. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 263A and adding Channel 263C3 at Center; removing Channel 234C and adding Channel 234C0 at Luling; removing Channel 254C and adding Channel 254C0 at San Angelo; and removing Channel 247C and adding Channel 247C0 at San Antonio.

■ 18. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 275C2 and adding Channel 276C at Hurricane.

■ 19. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 237B1 and adding Channel 237B at Colonial Heights.

■ 20. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 276A and adding Channel 276C3 at Crandon.

■ 21. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 229A and adding Channel 229c3 at Cheyenne.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–23182 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 092805B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2005 summer flounder commercial quota available to Massachusetts has been projected to have been harvested. To maintain consistency between state and Federal waters, NMFS is announcing the closure of summer flounder in Federal waters to coincide with the closure announced by the Massachusetts Division of Marine Fisheries (MA DMF). Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2005, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts of the closure and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, November 18, 2005, through 2400 hours, December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Ruccio, Fishery Management Specialist, (978) 281–9104.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2005 calendar year was set equal to 18,180,002 lb (8,246,395 kg) (70 FR 303, January 4, 2005). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 1,239,960 lb (562,442 kg). However, the 2005 allocation to Massachusetts was reduced to 1,177,554 lb (534,130 kg) due to research set-aside and 2004 quota overages. The states of North Carolina, New Jersey, and Rhode Island and the Commonwealth of Virginia have transferred a total of 53,176 lb (24,121 kg) to Massachusetts in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), bringing the total quota to 1,230,730 lb (558,259 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. In consultation with the MA DMF, the Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2005. Furthermore, this closure action in Federal waters is necessary to coordinate with the closure announced for state waters by the MA DMF to maintain consistency in the fishery.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 18, 2005, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2005 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 18,

2005, federally permitted dealers may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23187 Filed 11–18–05; 2:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 225
Wednesday, November 23, 2005

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 05–012P]

RIN #0583–AD20

Addition of the People's Republic of China To the List of Countries Eligible To Export Processed Poultry and Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add the People's Republic of China to the list of countries eligible to export processed poultry and poultry products to the United States. Reviews of the People's Republic of China's laws, regulations, and other materials show that its poultry processing system includes requirements equivalent to all provisions in the Poultry Products Inspection Act (PPIA) and its implementing regulations.

FSIS is proposing to allow processed poultry products from the People's Republic of China to be imported into the United States only if they are processed in certified establishments in the People's Republic of China from poultry slaughtered in certified slaughter establishments in other countries eligible to export poultry to the United States. China is not currently eligible to export poultry products to the United States that include birds that were slaughtered in China's domestic establishments. Under this proposed rule, all poultry products exported from the People's Republic of China to the United States will be subject to reinspection at the U.S. ports-of-entry by FSIS inspectors as required by law.

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. 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, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments. Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number 05–012P.

All comments submitted in response to this proposal, 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_&_policies/2005_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend the Federal poultry products inspection regulations to add the People's Republic of China to the list of countries eligible to export processed poultry and poultry products to the United States.

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and its implementing regulations, poultry products imported into the United States must be produced under standards equivalent to those of the United States for safety, wholesomeness, and labeling accuracy. Section 381.196 of Title 9 of the Code of Federal Regulations (CFR) establishes the procedures by which foreign countries wanting to export poultry and poultry products to the United States may become eligible to do so.

Section 381.196(a) requires that a foreign country's poultry inspection system include standards equivalent to those of the United States, and that the legal authority for the system and its implementing regulations be determined equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; and (6) official controls over condemned product.

Section 381.196 also requires that a poultry inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, ensure that those establishments and their poultry products comply with requirements equivalent to the provisions of the PPIA and the poultry product inspection regulations. Foreign country authorities must be able to ensure that all certifications required under Section 381.196 of the poultry product inspection regulations (Imported Products) can be relied upon before approval to export poultry products to the United States may be granted. Besides relying on its initial determination of a country's eligibility and performing ongoing reviews to ensure that products shipped to the United States are safe, wholesome and properly labeled and packaged, FSIS randomly samples imported poultry and poultry products for reinspection as they enter the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry products can be granted. This evaluation consists of two processes: a document review and an on-site review. The document review is an evaluation of the laws, regulations,

and other written materials used by the country to operate its inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country. The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/equivalence_process/index.asp.*

Evaluation of the People's Republic of China Inspection System

In response to a request from the People's Republic of China for approval to export processed poultry and poultry products to the United States, FSIS conducted a review of the People's Republic of China poultry processing inspection system to determine if it was equivalent to the U.S. poultry inspection system. First, FSIS compared the People's Republic of China's poultry inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in the People's Republic of China's poultry inspection laws and regulations are equivalent to those mandated by the PPIA and implementing regulations. FSIS then conducted an on-site review of the People's Republic of China poultry processing inspection system in operation. The FSIS review team concluded that the People's Republic of China's implementation of poultry processing standards and procedures was equivalent to those of the United States. The full report on People's Republic of China can be found on the FSIS Web site at *http://www.fsis.usda.gov/regulations/foreign_audit_reports/index.asp.*

FSIS is proposing to allow processed poultry products from the People's Republic of China to be imported into the United States only if they are processed in certified establishments in the People's Republic of China from poultry slaughtered in certified slaughter establishments in other countries eligible to export poultry to the United States. China is not currently eligible to export poultry products to the United States that were slaughtered in China's domestic establishments, and this rulemaking will not change its eligibility to do so.

If this proposed rule is adopted, all poultry products exported to the United States from the People's Republic of China will be subject to reinspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. Other types of inspection will also be conducted, including examining the product for defects and performing laboratory analyses that will detect chemical residues on the product or determine whether the product is microbiologically contaminated.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be ''Refused Entry'' and must be re-exported, destroyed or converted to animal food.

Accordingly, FSIS is proposing to amend § 381.196 of the Federal poultry products inspection regulations to add the People's Republic of China as a country from which processed poultry and poultry products may be eligible for import into the United States. As a country eligible to export processed poultry products to the United States, the government of the People's Republic of China would certify to FSIS those establishments wishing to export such products to the U.S. and operating according to U.S. requirements. FSIS would retain the right to verify that establishments certified by the People's Republic of China government are meeting the U.S. requirements. This would be done through annual on-site reviews of the establishments while they are in operation.

The Agency notes that the Animal and Plant Health Inspection Service of USDA has classified the People's Republic of China as having Avian Influenza. Even if a foreign country is listed in FSIS regulations as eligible to export poultry products, those poultry products must also comply with other U.S. requirements. Before a shipment of processed poultry or poultry products may be presented for re-inspection at the port-of entry by FSIS, it must have first met the requirements of both the U.S. Customs Service and APHIS. APHIS is responsible for keeping foreign animal diseases out of the United States. Under Title 9, part 94 of its regulations (9 CFR part 94), APHIS sets restrictions on the importation of any fresh, frozen, and chilled poultry, poultry products, and edible products from countries in which certain animal diseases exist. Those products that APHIS has restricted from entering the United States because of animal disease conditions in the country of origin will be refused entry before reaching an FSIS import inspection facility.

FSIS and APHIS work closely to ensure that poultry and poultry products imported into the United States comply with the regulatory requirements of both agencies. In 1985, FSIS and APHIS signed a memorandum of understanding (MOU) in which both agencies agreed to cooperate in meeting their respective needs relative to information exchange of disease surveillance, diagnostic testing, investigations, tracebacks, and animal and public health emergencies to achieve their related objectives of reducing disease of animal and public health concern, and of providing a wholesome and economical food supply. The MOU is updated periodically to ensure that it addresses areas of importance to both agencies. In accord with this MOU, FSIS and APHIS established procedures for communication between the two agencies regarding the inspection, handling, and disposition of imported poultry products. APHIS and FSIS communicate regularly to ensure that the products APHIS has restricted from entering the United States because of animal disease concerns are not imported into the United States.

Economic Impact Analysis

There are 25 establishments in the People's Republic of China that will be exporting product to the U.S. if this proposal is adopted. The establishments will export shelf stable cooked poultry products. U.S. imports from these establishments are expected to total less than 2,500,000 pounds per year.

U.S. firms export large amounts of poultry and poultry products to the People's Republic of China. Table A reflects U.S. exports of poultry and poultry products to the People's Republic of China for the years 1998–2003.

Adoption of this proposed rule will open trade between the U.S. and the People's Republic of China in poultry products. The impact of this proposed rule on U.S. consumers is voluntary in that consumers will not be required to purchase poultry products produced and processed in the People's Republic of China, although they may choose to do so. Expected benefits from this type of proposed rule will accrue primarily to consumers in the form of lower prices. The volume of trade stimulated

by this proposed rule, however, will likely be so small as to have little effect on supply and prices. Consumers, apart from any change in prices, will benefit from increased choices in the marketplace.

The costs of this rule will accrue primarily to producers in the form of greater competition from the People's Republic of China. Again, it must be noted that the volume of trade stimulated by this rule will likely be small and have little effect on supply and prices. Nonetheless, it is possible that U.S. firms that produce products that will compete with the People's Republic of China imports could face short-run difficulty. However, in the long run, such firms will likely adjust their product mix and be able to compete effectively.

The most significant effects of this proposed rule will likely come through efficiency gains. Products will only be imported from the People's Republic of China if the People's Republic of China establishment can produce the products more efficiently than their U.S. counterparts. Then, U.S. firms will have the incentive to specialize in the production of products in which they are relatively more efficient. In the long run, this improved efficiency will make U.S. producers more competitive both domestically and internationally.

TABLE A.—U.S. EXPORTS OF POULTRY PRODUCTS TO THE PEOPLE'S REPUBLIC OF CHINA, 1998–2003

[Data shown in metric tons]

Product	1998	1999	2000	2001	2002	2003
Poultry Meats	41493	61948.9	64787.2	62413.8	86871.4	136494.9
Chickens, Fr/Froz	39007.7	58762.5	61181.2	48786.6	70670.3	129617.8
Poultry, Misc	18391.9	15603.1	16204.1	19110.2	13962.8	47911.3
Poultry Meats, Prep	46.6	1518.1	1860.9	8562.6	8831.4	3796.6
Turkeys, Fr/Froz	2437.5	1624.7	1624	4764.1	6986.2	2236.6
Other Poultry Fr/Frz	1.2	43.6	121.2	300.4	383.5	843.9

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule would add the People's Republic of China to the list of countries eligible to export Poultry products into the United States. Once the People's Republic of China begins to export poultry products into the United States, the volume of cooked poultry products available in the U.S. market will likely increase by approximately 2,500,000 pounds per year. However, this small volume of trade is unlikely to impact the supply and prices of these products. Therefore, the proposed action should have no significant impact on small entities that produce these types of products domestically.

Paperwork Requirements

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export poultry products to the United States are required to provide information to FSIS certifying that its inspection system provides standards equivalent to those of the United States and that the legal authority for the system and its implementing regulations are equivalent to those of the United States before they may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave the People's Republic of China questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number #0583–0094. The proposed rule contains no other paperwork requirements.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that this proposed rule comes to the attention of the public—including minorities, women, and persons with disabilities—FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

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 our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a broader and more diverse audience.

In addition, FSIS offers an electronic mail subscription service that provides an automatic and customized notification when popular pages are updated, included **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 password protect their accounts.

List of Subjects 9 CFR Part 381

Imported Poultry Products.

For the reasons set out in the preamble, 9 CFR part 381 is proposed to be amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.196 [Amended]

2. Section 381.196 would be amended by adding ''People's Republic of China [2]'' in alphabetical order to the list of countries in paragraph (b).

Done at Washington, DC on: November 17, 2005.

Barbara J. Masters,

Administrator.

[FR Doc. 05–23123 Filed 11–22–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20836; Directorate Identifier 2005–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 and 727–200F Series Airplanes; 737–200, 737–200C, 737–300, and 737–400 Series Airplanes; 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes; 757–200 and 757–200PF Series Airplanes; and 767–200 and 767–300 Series Airplanes

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document announces a reopening of the comment period for the above-referenced NPRM. The NPRM proposed the adoption of a new airworthiness directive (AD) for certain Boeing transport category airplanes. That NPRM invites comments concerning the proposed requirements for replacing any insulation blanket constructed of polyethyleneteraphthalate (PET) film, ORCON Orcofilm® AN–26 (hereafter ''AN–26''), with a new insulation blanket. This reopening of the comment period is necessary to provide additional opportunity for public comment on the proposed requirements of that NPRM.

DATES: We must receive comments on this proposed AD by February 21, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Sue Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD for certain Boeing Model 727–200 and 727–200F series airplanes; 737–200, 737–200C, 737–300, and 737–400 series airplanes; 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes; 757–200 and 757–200PF series airplanes; and 767–200 and 767–300 series airplanes. The NPRM was published in the **Federal Register** on June 6, 2005 (70 FR 32738). The NPRM proposed to require replacing any insulation blanket constructed of AN–26 with a new insulation blanket. The NPRM action invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have received many comments. Most commenters express concerns about the unavailability of appropriate service information and the limited number of compliance methods. In addition, several commenters suggest alternative methods of compliance, but do not provide any specific details.

It is our intent to address the identified unsafe condition in a timely manner, with minimum disruption to industry, and maximum flexibility in methods of compliance. We encourage interested parties to continue to evaluate the proposal and to submit additional comments with more specific details concerning issues that the FAA may need to evaluate before finalizing its decision of the proposal. We have determined that such input may be beneficial before adoption of a final rule. As a result, we have decided to reopen the comment period for 90 days to receive additional comments.

No part of the regulatory information has been changed; therefore, the NPRM is not republished in the **Federal Register**.

Comments Due Date

We must receive comments on this AD action by February 21, 2006.

Issued in Renton, Washington, on November 10, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23153 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 145 and 147

RIN 3038–AC05

Alternative Market Risk and Credit Risk Capital Charges for Futures Commission Merchants and Specified Foreign Currency Forward and Inventory Capital Charges

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is reopening the comment period for interested parties to comment on proposed amendments to Parts 1, 145 and 147 of the Commission's regulations.

DATES: Written comments must be received on or before November 30, 2005.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail *secretary@cftc.gov.* Include ''Proposed Amendment to Rule 1.17'' in the subject line of the message.
- Fax: (202) 418–5521.
- Mail: Send to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- Courier: Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director and Chief Accountant, at (202) 418–5430, or Thelma Diaz, Special Counsel, at (202) 418–5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: (*tsmith@cftc.gov*) or (*tdiaz@cftc.gov*).

SUPPLEMENTARY INFORMATION: On October 11, 2005, the Commission published a notice of proposed rulemaking that sought comment on proposed amendments to Commission Regulations 1.10(h), 1.17(c), 145.5, and 147.3.[1] The proposed amendments, if adopted, would permit qualifying futures commission merchants (''FCMs'') that are also registered as securities broker-dealers (''BDs'') to use certain alternative capital charges approved by the Securities and Exchange Commission (''SEC''). The proposed amendments also addressed confidential treatment for the new reports and statements that FCM/BDs using the alternative capital charges would be required to file, and also addressed the confidential treatment of certain other information that all FCM/BDs must file with both the Commission and the SEC. The release published in the **Federal Register** also included proposed amendments to reduce the capital deductions specified in Regulation 1.17 for uncovered inventory or forward contracts in specified foreign currencies.[2]

The Commission established a 30-day period for submitting public comment on the proposed amendments, ending November 10, 2005. By letter dated November 9, 2005, an association of securities industry participants, whose members include firms that are registered as FCMs and BDs, requested an extension of the original comment period.[3] In response to this request, and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period on the proposed amendments until seven days from the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on November 17, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–23148 Filed 11–22–05; 8:45 am]

BILLING CODE 6351–01–M

[1] 70 FR 58985 (October 11, 2005). The Commission also proposed conforming amendments to Regulations 1.10(d)(4)(ii), 1.10(f)(1), 1.16(c)(5), 1.18(a) and (b)(2), and 1.52(a).

[2] The RIN Number for the release published in the **Federal Register** on October 11, 2005 was identified as 3038–AC19. The correct RIN Number, 3038–AC05, has been used in this release.

[3] A copy of the letter is available on the Commission's Web site at *http://www.cftc.gov.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0006; FRL–7998–5]

Revisions to the California State Implementation Plan, Imperial and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve local rules concerning definitions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 23, 2005.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0006, by one of the following methods:

1.Agency Web site: *http://docket.epa.gov/rmepub/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2.Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

3.E-mail: *steckel.andrew@epa.gov.*

4.Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are ''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD 101 and SBCAPCD 102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action

without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 26, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 05–23089 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IN–0010; FRL–8001–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Vigo County 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination that the Vigo County ozone nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2002–2004 seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area.

EPA is proposing to approve a request from the State of Indiana to redesignate Vigo County to attainment of the 8-hour ozone NAAQS. This request was submitted by the Indiana Department of Environmental Management (IDEM) on July 5, 2005 and supplemented on October 20, 2005 and November 4, 2005. In proposing to approve this request, EPA is also proposing to approve the State's plan for maintaining the 8-hour ozone NAAQS in this area through 2015 as a revision to the Indiana State Implementation Plan (SIP). EPA is also finding adequate and is proposing to approve the State's 2015 Motor Vehicle Emission Budgets (MVEBs) for this area.

DATES: Comments must be received on or before December 23, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0010, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *mooney.john@epa.gov.*

4. Fax: (312) 886–5824.

5. Mail: You may send written comments to: John M. Mooney, Chief, Air Programs Branch Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

6. Hand delivery: Deliver your comments to: John M. Mooney, Chief, Air Programs Branch Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IN–0010. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided and may be made available online at *http://docket.epa.gov/rmepub/*, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Steve Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What Actions Is EPA Proposing to Take?
II. What Is the Background for These Actions?
III. What Are the Criteria for Redesignation?
IV. Why Is EPA Proposing to Take These Actions?
V. What Would Be the Effect of These Actions?
VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation
B. Adequacy of Indiana's Motor Vehicle Emission Budgets (MVEBs)
VII. Proposed Actions
VIII. Statutory and Executive Order Reviews

I. What Actions Is EPA Proposing to Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Vigo County, Indiana nonattainment area has attained the 8-hour ozone standard and that Vigo County has met the requirements for redesignation under section 107(d)(3)(E). EPA is thus proposing to approve the request to change the legal designation of the Vigo County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Indiana's maintenance plan SIP revision for Vigo County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep Vigo County in attainment of the ozone NAAQS for the next 10 years. Additionally, EPA is announcing its action on the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment period for the 2015 MVEBs began on July 12, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm).* The Adequacy comment period for these MVEBs ended on August 11, 2005. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. Please see the Adequacy Section of this rulemaking for further explanation on this process. Therefore, we are finding adequate and proposing to approve the State's 2015 MVEBs for transportation conformity purposes.

II. What Is the Background for These Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Vigo County was designated unclassifiable/attainment under the 1-hour ozone NAAQS, which was revoked on June 15, 2005. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard.

On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some ozone nonattainment areas are subject only to the provisions of subpart 1. Other ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, (69 FR 23951) an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. Vigo County was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) based on air quality monitoring data from 2001–2003.

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm) when rounding is considered. 40 CFR 50.10 and Appendix I. See 69 FR 23857 (April 30, 2004) for further information. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of Part 50.

On July 5, 2005, Indiana requested that EPA redesignate Vigo County to attainment for the 8-hour ozone standard. This request was supplemented with submittals dated October 20, 2005 and November 4, 2005. The redesignation request included three years of complete, quality-assured data for the period of 2002 through 2004, indicating the 8-hour NAAQS for ozone had been attained for Vigo County. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,''

Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, dated November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing To Take These Actions?

On July 5, 2005, Indiana requested redesignation of Vigo County to attainment for the 8-hour ozone standard. Indiana supplemented this request with submittals dated October 20, 2005 and November 4, 2005. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

V. What Would Be the Effect of These Actions?

Approval of the redesignation request and maintenance plan would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Indiana SIP a plan for maintaining the 8-hour ozone NAAQS through 2015. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS, and establishes MVEBs for the year 2015 of 2.48 tons per day (tpd) VOC and 3.67 tpd NO_X for Vigo County.

VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to making a determination that the Vigo County nonattainment area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determinations is as follows:

1. The Area Has Attained the 8-hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that Vigo County has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR Part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

IDEM submitted ozone monitoring data for the 2002 to 2004 ozone seasons. The State quality assures monitoring data in accordance with 40 CFR 58.10 and the Indiana Quality Assurance Manual and records the data in the AIRS database, thus making the data publicly available. IDEM operates two ozone monitors in Vigo County: Terre Haute and Sandcut. The data for 2002–2004 have been quality assured and are recorded in AIRS. For the Terre Haute monitor, data completeness averaged 98%, 98%, and 100% in 2002, 2003 and 2004, respectively. For the Sandcut monitor, data completeness averaged 96%, 93% and 97% in 2002, 2003 and 2004, respectively. The annual fourth highest 8-hour average ozone concentrations and the three-year average fourth-high 8-hour average ozone concentrations are summarized in Table 1.

TABLE 1.—ANNUAL FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATION AND THREE-YEAR AVERAGE FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS IN VIGO COUNTY, INDIANA

Site	Year	4th high 8-hour average (ppm)	3-year average for ending year (ppm)
Terre Haute	2002	0.082	NA
Terre Haute	2003	0.066	NA
Terre Haute	2004	0.057	0.068
Sandcut	2002	0.099	NA
Sandcut	2003	0.080	NA
Sandcut	2004	0.072	0.084

It should be noted that preliminary 2005 monitoring data show that Vigo County continues to attain the 8-hour ozone standard.

In addition, as discussed below with respect to the maintenance plan, IDEM has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Indiana provide an adequate demonstration that Vigo County has attained the 8-hour ozone NAAQS. Therefore, we are

proposing to find that Vigo County has attained the 8-hour ozone standard.

2. For Purposes of Redesignation the Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We are proposing to determine Indiana has met all currently applicable SIP requirements for purposes of redesignation for Vigo County under Section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Indiana SIP meets all SIP requirements currently applicable for purposes of redesignation under Part D of Title I of the CAA (requirements specific to Subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we are proposing to determine that the Indiana SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, we have ascertained what SIP requirements are applicable to the areas for purposes of redesignation. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

a. Vigo County has met all requirements applicable for purposes of redesignation under section 110 and part D of the CAA. The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, to qualify for redesignation of an area to attainment, the state and the area must meet the relevant CAA requirements that come due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (Mar. 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements. Section 110(a) of title I of the CAA contains the general requirements for a SIP. General SIP elements and requirements are delineated in section 110(a)(2). These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; enforceable emission limitations and other control measures, means or techniques; provisions for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call,[1] Clean Air Interstate Rule (CAIR)(70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

We believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

We believe that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation requests. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements.

Part D Requirements. EPA has determined that the Indiana SIP meets applicable SIP requirements under part D of the CAA since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to submission of the Vigo County redesignation request. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Vigo County was classified as subpart 1 nonattainment area, and therefore subpart 2 requirements do not apply.

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call, requiring the District of Columbia and 22 states, including Indiana, to reduce their statewide emissions of NO_X in order to reduce the transport of ozone and ozone. In compliance with EPA's NO_X SIP call, IDEM has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Indiana's rules as fulfilling Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465). On December 11, 2003 (68 FR 69025) EPA approved revisions to these rules.

Part D, Subpart 1 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for Vigo County are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none is applicable to the area for purposes of redesignation. Since the State of Indiana has submitted a complete ozone redesignation request for Vigo County prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Vigo County area for purposes of redesignation.

Furthermore, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Vigo County upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 176 conformity requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA approved Indiana's general conformity SIP on January 14, 1998 (63 FR 2146). Indiana does not have a Federally approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules. Indiana has submitted on-highway motor vehicle budgets for Vigo County of 2.84 tpd of VOC and 3.67 tpd of NO_X, based on the area's 2015 level of emissions. Vigo County must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, Florida). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. For purposes of redesignation Vigo County has a fully approved applicable SIP under section 110(k) of the CAA. EPA has fully approved the Indiana SIP for Vigo County under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003). Since the passage of the CAA of 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Vigo County under the 1-hour ozone standard. No Vigo County area SIP provisions are currently disapproved, conditionally approved, or partially approved. As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are, therefore, not applicable requirements for purposes of redesignation.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Indiana has demonstrated that the observed air quality improvement in Vigo County is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 1999 and 2004, one of the years Vigo County monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Indiana has implemented in recent years.

a. Permanent and enforceable controls implemented. The following is a discussion of permanent and enforceable measures that have been implemented in the area:

Reasonably Available Control Technology (RACT). Vigo County was not previously required to be covered by RACT regulations for existing sources under the CAA. However, Indiana has implemented statewide RACT controls through the following regulations:

326–IAC 8–2 Surface Coating Emission Limitations;
326–IAC 8–3 Organic Solvent Degreasing Operations;
326–IAC 8–4 Petroleum Sources;
326–IAC 8–5 Miscellaneous Operations; and
326–IAC 8–6 Organic Solvent Emission Limitations.

NO_X rules. In compliance with EPA's NO_X SIP call, Indiana developed rules to control NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. These rules required sources to begin reducing NO_X emissions in 2004, with emission reductions increasing to 31 percent statewide by 2007. It should be noted that statewide NO_X emissions actually began to decline in 2002 as sources phased in emission controls needed to comply with the State's NO_X emission control regulations. From 2004 on, NO_X emissions from EGUs are capped at a statewide total well below pre-2002 levels. It should be noted that NO_X emissions are expected to further decline as the State meets the requirements of EPA's Phase II NO_X SIP call (69 FR 21604).

Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide as a result of Federal emission control measures, with additional emission reductions expected to occur in the future as additional emission controls are implemented. Federal emission control measures have included: the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Nonroad Diesel Rule (69 FR 38958). This rule will reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

Indiana commits to maintain the implemented emission control measures after redesignation of Vigo County to attainment of the 8-hour ozone NAAQS. Any revisions to emission control regulations and emission limits will be submitted to the EPA for approval as SIP revisions.

b. Emission reductions. Indiana is using 1999 for the nonattainment year inventory, emissions from which are used to compare to the 2004 attainment year inventory to demonstrate that emission reductions (from 1999 to 2004) have contributed to the improvement in air quality. Emissions estimates were taken directly from the National Emissions Inventory (NEI), with the following exception. Point source emissions information was compiled from IDEM's 1999 annual emissions statement database.

For comparison, IDEM developed an inventory for 2004, one of the years the area monitored attainment of the 8-hour NAAQS. The point source sector information was compiled from IDEM's 2004 annual emissions statement database and the 2004 EPA Air Markets acid rain database. The area source sector information was taken from the Indiana 2002 periodic inventory submitted to EPA. These projections were made from the U.S. Department of Commerce Bureau of Economic Analysis growth factors with some updated local information. The nonroad sector emission estimates were developed using NONROAD with the following modifications. Emissions were estimated for two nonroad categories not included in NONROAD, commercial marine vessels and railroads. Recreational motorboat population and spatial surrogates (used to assign emissions to each county) were updated. The populations for the construction equipment category were reviewed and updated based upon surveys completed in the Midwest and the temporal allocation for agricultural sources was also updated. The onroad sector emissions were calculated using MOBILE 6.2.

Based on the inventories described above, Indiana's submittal documents changes in VOC and NO_X emissions from 1999 to 2004 for Vigo County. Indiana also documented the change in emissions for the surrounding Western Indiana Counties of Clay, Parke, Sullivan and Vermillion. Emissions data are shown in Tables 2 and 3 below.

TABLE 2.—COMPARISON OF 1999 AND 2004 VOC AND NO_X EMISSIONS FOR VIGO COUNTY (TPSD)

Sector	VOC			NO_X		
	1999	2004	Net change (1999–2004)	1999	2004	Net change (1999–2004)
Point	7.36	4.84	−2.52	26.65	28.67	2.02
Area	14.18	6.48	−7.70	1.45	0.99	−0.46
Nonroad	2.32	2.76	0.44	5.28	3.39	−1.89
Onroad	8.30	6.22	−2.08	12.29	9.42	−2.87
Total	32.16	20.30	−11.86	45.67	42.47	−3.20

TABLE 3.—COMPARISON OF 1999 AND 2004 VOC AND NO_X EMISSIONS FOR SURROUNDING COUNTIES (TPSD)

Sector	VOC			NO_X		
	1999	2004	Net change (1999–2004)	1999	2004	Net change (1999–2004)
Point	5.52	3.22	−2.30	82.39	62.90	−19.49
Area	19.18	6.76	−12.42	0.94	0.54	−0.40
Nonroad	2.70	4.11	1.41	9.17	6.93	−2.24
Onroad	7.20	6.12	−1.08	9.87	11.56	1.69
Total	34.60	20.21	−14.39	102.37	81.93	−20.44

Table 2 shows that Vigo County reduced NO_X emissions by 3.20 tpd and VOC emissions by 11.86 tpd between 1999 and 2004. Table 3 shows emissions in the surrounding counties decreased by 14.39 tpd for VOC and 20.44 tpd for NO_X.

Based on the information summarized above, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA. (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Vigo County nonattainment area to attainment status, Indiana submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in Vigo County for at least 10 years after redesignation.

a. What is required in a maintenance plan? Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory. The State developed an inventory for 2004, one of the years the area monitored attainment of the 8-hour NAAQS. Inventory methodology is described in section 3 above. The attainment level of emissions is summarized along with the 2010 and 2015 projected emissions for Vigo County in Table 3 below.

c. Demonstration of Maintenance. As part of the redesignation request, IDEM submitted revisions to the 8-hour ozone SIP to include a 10-year maintenance plan as required by section 175A of the CAA. For Vigo County, this demonstration shows maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

IDEM developed projected emissions inventories for 2010 and 2015. Onroad mobile source emissions were projected using Mobile 6.2 in accordance with ''Procedures for Preparing Emissions Projections,'' EPA–45/4–91–019. Emissions for the point, area and nonroad sectors were projected using growth and control files developed by the Midwest Regional Planning Organization. This method was used to ensure that the inventories used for redesignation are consistent with modeling performed in the future. These emission estimates are presented in Tables 4 and 5 below.

TABLE 4.—COMPARISON OF 2004–2015 VOC AND NO_X EMISSIONS FOR VIGO COUNTY (TPSD)

Sector	VOC				NO_X			
	2004	2010	2015	Net change 2004–2015	2004	2010	2015	Net change 2004–2015
Point	4.84	7.24	8.42	3.58	28.67	12.91	12.93	−15.74
Area	6.48	6.94	7.32	0.84	0.99	1.05	1.08	0.09
Nonroad	2.76	1.93	1.60	−1.16	3.39	2.01	1.53	−1.86
Onroad	6.22	3.84	2.58	−3.64	9.42	5.76	3.34	−6.08
Total	20.30	19.95	19.92	−0.38	42.47	21.73	18.88	−23.59

TABLE 5.—COMPARISON OF 2004–2015 VOC AND NO_X EMISSIONS FOR SURROUNDING COUNTIES (TPSD)

Sector	VOC				NO_X			
	2004	2010	2015	Net change 2004–2015	2004	2010	2015	Net change 2004–2015
Point	3.22	3.50	3.98	0.76	62.90	36.80	36.97	−25.93
Area	6.76	7.16	7.57	0.81	0.54	0.58	0.59	0.05
Nonroad	4.11	2.98	2.54	−1.57	6.93	3.60	2.98	−3.95
Onroad	6.12	7.40	4.48	−1.64	11.56	4.31	3.09	−8.47
Total	20.21	21.04	18.57	−1.64	81.93	45.29	43.63	−38.30

The emission projections show that in Vigo County emissions are not expected to exceed the level of the 2004 attainment year inventory during the 10-year maintenance period. Vigo County VOC and NO_X emissions are projected to decrease by 0.38 tpd and 23.59 tpd, respectively. Surrounding County VOC and NO_X emissions are projected to decrease by 1.64 tpd and 38.30 tpd, respectively.

IDEM notes that, although ozone modeling is not required to support ozone redesignation requests, a significant amount of ozone modeling data exist that support the connection between emissions reductions and air quality improvement, including modeling data that support a demonstration of maintenance for Vigo County. IDEM notes that the available

modeling data demonstrate that Vigo is significantly impacted by ozone and ozone precursor transport and that NO_X emission reductions are significantly beneficial for reducing 8-hour ozone concentrations in Vigo County. IDEM draws the conclusions discussed below from the various ozone modeling analyses that have addressed the Midwest.

EPA modeling analyses for the Heavy Duty Engine rule. EPA conducted ozone modeling for Tier II vehicle and low-sulfur fuels to support the final rulemaking for the Heavy Duty Engine (HDE) and Vehicle Standards and Highway Diesel Fuel Rule. This modeling, in part, addressed ozone levels in Vigo County and the West Central Indiana Counties. A base year of 1996 was modeled, and the impacts of fuel changes and the NO_X SIP call were addressed for high ozone episodes in 1995. The modeling supports the conclusion that the fuel improvements and the NO_X SIP call result in significant ozone improvements (lower projected ozone concentrations) in Vigo County and in the West Central Indiana Counties. Using the modeling results to determine Relative Reduction Factors (RRFs)[2] and, considering the 2001–2003 ozone design value at the Terre Haute ozone monitor (76 ppb) and at the Sandcut monitor (87) ppb, IDEM projected the 2007 ozone design value to be 66.1 ppb and 80.4 ppb, at Terre Haute and Sandcut, respectively. Therefore, the NO_X SIP call and the fuel modifications considered in the ozone modeling were found to significantly improve the ozone levels in Vigo County.

Lake Michigan Air Directors Consortium (LADCO) modeling analysis for the 8-hour ozone standard assessment. LADCO has performed ozone modeling to evaluate the effect of the NO_X SIP call and Tier II/Low Sulfur Fuel Rule on 2007 ozone levels in the Lake Michigan area, which includes Vigo County and the West Central Indiana Counties. Like the EPA modeling discussed above, this modeling indicates that the 2001–2003 ozone design values for the Vigo County monitoring sites would be reduced to below-standard levels in 2007 as the result of implementing the NO_X SIP call and the Tier II/Low Sulfur Fuel Rule.

[2] Relative Reduction Factors are fractional changes in peak ozone concentrations projected to occur as the result of assumed changes in precursor emissions resulting from the implementation of emission control strategies. Relative Reduction Factors are derived through ozone modeling and are applied to monitored peak ozone concentrations to project post-control peak ozone levels.

EPA modeling analysis for the Clean Air Interstate Rule (CAIR). EPA conducted modeling in support of the CAIR rulemaking. The modeling was based on 1999–2003 design values. Future year modeling was conducted for Vigo County and future year design values for 2010 and 2015 were evaluated for attainment of the 8-hour ozone NAAQS. Results of the CAIR modeling show that Vigo County should continue to attain the 8-hour ozone NAAQS in 2010. With additional CAIR reductions in 2015, design values continue to decrease.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the areas. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, Vigo County attained the 8-hour ozone NAAQS during the 2002–2004 time period. Indiana uses 2004 as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2004 equaled 20.30 tpd of VOC for Vigo County. Projected VOC emissions out to the year 2015 equaled 19.92 tpd of VOC. The SIP demonstrates that Vigo County will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.38 tpd of VOC for 2015. By this same method, 23.59 tpd (*i.e.*, 42.47 tpd less 18.88 tpd) is the safety margin for NO_X for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network. Indiana currently operates two ozone monitors in Vigo County. IDEM has committed to continue operating and maintaining an approved ozone monitor network in accordance with 40 CFR part 58.

e. Verification of Continued Attainment. Continued attainment of the ozone NAAQS in Vigo County depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in Vigo County consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. In addition, IDEM will periodically revise and review the VOC and NO_X emissions inventories for Vigo County to ensure that emissions growth is not threatening the continued attainment of the 8-hour ozone standard. Emissions inventories will be revised for 2005, 2008, and 2011, as necessary to comply with the emissions inventory reporting requirements of the CAA. The updated emissions inventories will be compared to the 2004 emissions inventories to assess emission trends and assure continued attainment of the 8-hour ozone standard.

f. Contingency Plan. The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for Vigo County to address a possible future ozone air quality problem. The contingency plan adopted by Indiana has two levels of responses, depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level) or has occurred or is imminent (Action Level).

A Warning Level response will occur when an annual (1-year) fourth-high monitored daily peak 8-hour ozone concentration of 88 ppb or higher is monitored in a single ozone season at any monitor within the ozone maintenance area. A Warning Level response will consist of Indiana performing a study to determine whether the high ozone concentration indicates a trend toward high ozone levels or whether emissions are increasing. If a trend toward higher ozone concentrations exists and is likely

to continue, the emissions control measures necessary to reverse the trend will be determined taking into consideration ease and timing of implementation, as well as economic and social considerations. The study, including applicable recommended next steps, will be completed within 12 months from the close of the ozone season with the recorded high ozone concentration. If emission controls are needed to reverse the adverse ozone trend, the procedures for emission control selection under the Action Level response will be followed.

An Action Level response will occur when a two-year average annual fourth-high monitored daily peak 8-hour ozone concentration of 85 ppb occurs at any monitor in the ozone maintenance area. A violation of the standard (a 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 85 ppb or greater) also triggers an Action Level response. In this situation, IDEM will determine the additional emission control measures needed to assure future attainment of the 8-hour ozone NAAQS. IDEM will focus on emission control measures that can be implemented in a short time, and selected emission control measures will be adopted and implemented within 18 months from the close of the ozone season with ozone monitoring data that prompted the Action Level Response. Adoption of any additional emission control measures will be subject to the necessary administrative and legal procedures, including publication of notices and the opportunity for public comment and response. If a new emission control measure is adopted by the State (independent of the ozone contingency needs) or is adopted at a Federal level and is scheduled for implementation in a time frame that will mitigate an ozone air quality problem, IDEM will determine whether this emission control measure is sufficient to address the ozone air quality problem. If IDEM determines that existing or soon-to-be-implemented emissions control measures should be adequate to correct the ozone standard violation problem, IDEM may determine that additional emission control measures at the State level may be unnecessary. Regardless, IDEM will submit to the EPA an analysis to demonstrate that proposed emission control measures are adequate to provide for future attainment of the 8-hour ozone NAAQS in a timely manner. EPA notes that it is construing this provision to require that any non-Federal control measure relied upon in lieu of a contingency measure be included in the State SIP or be submitted to EPA for approval into the SIP.

Contingency measures contained in the maintenance plan are those emission controls or other measures that Indiana may choose to adopt and implement to correct possible air quality problems. These include, but are not limited to, the following:

i. Lower Reid vapor pressure gasoline requirements;

ii. Broader geographic applicability of existing emission control measures;

iii. Tightened RACT requirements on existing sources covered by EPA Control Technique Guidelines (CTGs) issued in response to the 1990 CAA amendments;

iv. Application of RACT to smaller existing sources;

v. Vehicle Inspection and Maintenance (I/M);

vi. One or more Transportation Control Measure (TCM) sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions, to be selected from the following:

A. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

B. Transit improvements;

C. Traffic flow improvements; and

D. Other new or innovative transportation measures not yet in widespread use that affect State and local governments as deemed appropriate;

vii. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

viii. Controls on consumer products consistent with those adopted elsewhere in the United States;

ix. VOC or NO_X emission offsets for new or modified major sources;

x. VOC or NO_X emission offsets for new or modified minor sources;

xi. Increased ratio of emission offset required for new sources; and,

xii. VOC or NO_X emission controls on new minor sources (with VOC or NO_X emissions less than 100 tons per year).

g. Provisions for Future Updates of the Ozone Maintenance Plan. As required by section 175A(b) of the CAA, Indiana commits to submit to the EPA an update of the ozone maintenance plan eight years after redesignation of Vigo County to cover an additional 10-year period beyond the initial 10-year maintenance period.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Indiana for Vigo County meets the requirements of section 175A of the CAA.

B. Adequacy of Indiana's Motor Vehicle Emissions Budgets (MVEBs)

1. How Are MVEBs Developed and What Are the MVEBs for Vigo County?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard). These emission control strategy SIP revisions (*e.g.*, reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining

transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Vigo County's 10-year maintenance plan submission contains new VOC and NO_X MVEBs for 2015. The availability of the SIP submission with these 2015 MVEBs was announced for public comment on EPA's Adequacy Web page on July 12, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2015 MVEBs for Vigo County closed on August 11, 2005. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. In an October 25, 2005, letter, EPA informed IDEM that we had found the 2015 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in Vigo County because EPA has determined that the areas can maintain attainment of the 8-hour ozone NAAQS for the relevant 10-year period with mobile source emissions at the levels of the MVEBs. IDEM has determined the 2015 MVEBs for Vigo County to be 2.84 tpd for VOC and 3.67 tpd for NO_X. It should be noted that these MVEBs exceed the onroad mobile source VOC and NO_X emissions projected by IDEM for 2015, as summarized in Table 3 above (''onroad'' source sector). IDEM decided to include safety margins (described further below) of 0.26 tpd of VOC and 0.33 tpd for NO_X in the MVEBs to provide for mobile source growth. Indiana has demonstrated that Vigo County can maintain the 8-hour ozone NAAQS with mobile source emissions of 2.84 tpd of VOC and 3.67 tpd of NO_X in 2015, including the allocated safety margins, since emissions will still remain under attainment year emission levels.

2. What Is the Vigo County Safety Margin?

As noted in Table 4, Vigo County VOC and NO_X emissions are projected to have safety margins of 0.38 tpd for VOC and 23.59 tpd for NO_X in 2015 (the difference between the attainment year, 2004, emissions and the 2015 emissions for all sources in Vigo County). Even if emissions reached the full level of the safety margin, the County would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by IDEM contain safety margins for mobile sources significantly smaller than the allowable safety margins reflected in the total emissions for Vigo County. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the onroad mobile source emissions for 2015 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VII. Proposed Actions

EPA is proposing to make a determination that Vigo County has attained the 8-hour ozone NAAQS, and EPA is proposing to approve the redesignation of Vigo County from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating Indiana's redesignation request, EPA is proposing to determine that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Any final approval of this redesignation request would change the official designation for Vigo County from nonattainment to attainment for the 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan SIP revision for Vigo County. The proposed approval of the maintenance plan is based on Indiana's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. Additionally, EPA is finding adequate and proposing to approve the 2015 MVEBs submitted by Indiana in conjunction with the redesignation requests.

VIII. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: November 15, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23221 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8001–4]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to the EPA for final authorization of the changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize the state's changes through this proposed final action.

DATES: Written comments must be received on or before December 23, 2005.

ADDRESSES: Send written comments to Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179. We must receive your comments by December 23, 2005. You can view and copy Michigan's application from 9 a.m. to 4 p.m. at the following addresses: Waste Management Division, Michigan Department of Environmental Quality, Constitution Hall—Atrium North, Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer (517) 353–9548; and EPA Region 5, contact Judy Feigler at the following address.

FOR FURTHER INFORMATION CONTACT: Judy Feigler, Michigan Regulatory Specialist, U.S. EPA, DM–7J, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan final authorization to operate its hazardous waste management program with the changes described in the authorization application. Michigan has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Michigan subject to RCRA will now have to comply with the authorized state requirements (listed in section F of

this notice) instead of the equivalent federal requirements in order to comply with RCRA. Michigan has enforcement responsibilities under its state hazardous waste management program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Michigan is being authorized by today's action are already effective, and are not changed by today's action.

D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Michigan Previously Been Authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805) to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); and on July 31, 2002, effective July 31, 2002 (67 FR 49617).

F. What Changes Are We Authorizing With Today's Action?

On September 7, 2005, Michigan submitted a complete program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Michigan's hazardous waste management program revision satisfies all requirements necessary to qualify for final authorization. Therefore, we propose to grant Michigan final authorization for the following program changes:

PROGRAM REVISIONS BASED ON FEDERAL RCRA CHANGES

Description of federal requirement	Checklist No., if relevant	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
HSWA Codification Rule; Household Waste (Resource Recovery Facilities).	17C	July 15, 1985, 50 FR 28702	R 299.9204(2)(a) and (2)(a)(i)–(ii).
Corrective Action Management Units and Temporary Units.	121	February 16, 1993, 58 FR 8658	R 299.9102(s) and (cc), R 299.9103(r), R 299.9105(c)(vii), R 299.9105(t), R 299.9107(j), R 299.9311, R 299.9413, R 299.9519(9), R 299.9601(1), (2)(k) and (l) and (3)(a), R 299.9627, R 299.9629(3)(a) and (b), R 299.9635(3), R 299.9636, and R 299.11003(1)(u).
Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation Time.	184	March 8, 2000, 65 FR 12378	R 299.9306(1)(d) and (7)–(10).
Organobromine Production Waste and Petroleum Refining Process Waste: Technical Correction.	187	June 8, 2000, 65 FR 36365	R 299.9220 and R 299.11003(1)(u).
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combusters.	188, 188.1, 188.2	July 10, 2000, 65 FR 42292; May 14, 2001, 66 FR 24270; July 3, 2001, 66 FR 35087.	R 299.9230(2) and (3); R 299.9519(5)(j)(v); R 299.9623(2), (3)(b) and (11); and R 299.11003(1)(n).
Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities.	189	November 8, 2000, 65 FR 67068	R 299.9222, R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(j) and (u).
Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil.	190	December 26, 2000, 65 FR 81373	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(u).
Storage, Treatment, Transportation and Disposal of Mixed Wastes.	191	May 16, 2001, 66 FR 27218	R 299.9101(q), R 299.9102(d) and (z), R 299.9103(d) and (k), R 299.9104, R 299.9105(b), (j), (k), (v), (w), (z) and (aa), R 299.9203, R 299.9822(2)–(14), R 299.9823(2)–(4) and (6)–(12).
Mixture and Derived-From Rule Revisions.	192A	May 16, 2001, 66 FR 27266	R 299.9203(1)(c), (3), (7) and (8).
Land Disposal Restrictions Correction	192B	May 16, 2001, 66 FR 27266	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(u).
Change of EPA Mailing Address; Additional Technical Amendments and Corrections.	193	June 28, 2001, 66 FR 34374	R 299.11005(2).

PROGRAM REVISIONS BASED ON FEDERAL RCRA CHANGES—Continued

Description of federal requirement	Checklist No., if relevant	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules.	194	October 3, 2001, 66 FR 50332	R 299.9203(1)(c) and (7)(c).
Inorganic Chemical Manufacturing Wastes Information and Listing.	195, 195.1	November 20, 2001, 66 FR 58258; April 9, 2002, 67 FR 17119.	R 299.9204(2)(o), R 299.9222, R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(j) and (u).
CAMU Amendments	196	January 22, 2002, 67 FR 2962	R 299.9102(s) and (t), R 299.9107(j), R 299.9635, R 299.9638, and R 299.9639.
Hazardous Air Pollutant Standards for Combusters: Interim Standards.	197	February 13, 2002, 67 FR 6792	R 299.9504(4), (15) and (20), R 299.9508(1)(b), R 299.9601(2)(i) and (7), R 299.9623, R 299.9640, R 299.9808(4), (7) and (9), R 299.11003(1)(v).
Hazardous Air Pollutant Standards for Combusters; Corrections.	198	February 14, 2002, 67 FR 6968	R 299.9519(5)(j)(v), R 299.9808(2), (3), (4), (7) and (9); and R 299.11003(1)(r).
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste.	199	March 13, 2002, 67 FR 11251	R 299.9202(1)(b)(iii), R 299.9204(1)(v), and R 299.9212(4).
Zinc Fertilizers Made From Recycled Hazardous Secondary Materials.	200	July 24, 2002, 67 FR 48393	R 299.9204(1)(x) and (y), R 299.9311, R 299.9413, R 299.9627, R 299.9801(3) and (5), and R 299.11003(1)(u).
Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries.	201	October 7, 2002, 67 FR 48393	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(u).
NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters: Corrections.	202	December 19, 2002, 67 FR 77687	R 299.9504(4) and (15) and R 299.9508(1)(b), R 299.9623(8), and R 299.9808(7) and (9).
Recycled Used Oil Management Standards.	203	July 30, 2003, 68 FR 44659	R 299.9205(8), R 299.9809 (1)(e) and (2)(p), and R 299.9815(1)(b) and (3)(f).

STATE-INITIATED MODIFICATIONS

State requirement	Effective date	Federal analog
MAC R 299.9205(4)	October 15, 1996	40 CFR 261.5 and 262.34.
MAC R 299.9206(3)	September 11, 2000	40 CFR 261.6(a)(3).
MAC R 299.9206(3)(g)	September 11, 2000	40 CFR 261.6(1)(2).
MAC R 299.9207(3)	June 21, 1994	40 CFR 261.7(b)(1)(i).
MAC R 299.9212(1), (2), and (3)	October 15, 1996	40 CFR 261.21, 261.22, and 261.23.
MAC R 299.9215(3)	April 20, 1988	40 CFR 261.21(c).
MAC R 299.9303(4)	September 22, 1998	40 CFR 262.12(b) and 270.11.
MAC R 299.9304(2)(h) and (4)(c)	October 15, 1996	40 CFR 262.20.
MAC R 299.9304(6)	October 15, 1996	None.
MAC R 299.9306(1)(e) and (f)	October 15, 1996	40 CFR 262.34(a)(1).
MAC R 299.9307(5)–(7)	September 22, 1998	40 CFR 262.40(c).
MAC R 299.9401	October 15, 1996	40 CFR 263.10.
MAC R 299.9404	October 15, 1996	40 CFR 263.12.
MAC R 299.9410(1) and (3)	October 15, 1996	40 CFR 263.30 and 263.31.
MAC R 299.9503(1)(i) and (k) and (5)	October 15, 1996	40 CFR 262.34.
MAC R 299.9508(1)(f)	October 15, 1996	40 CFR 270.14(b)(17).
MAC R 299.9514(1) and (2)(c)	September 22, 1998	40 CFR 124.12.
MAC R 299.9516(3)	October 15, 1996	40 CFR 270.50.
MAC R 299.9611(4)	October 15, 1996	None.
MAC R 299.9629(3)(a)(ii) and (iii) and (3)(b)(ii) and (iii)	September 11, 2000	40 CFR 264.90(a) and 264.101(b).
MAC R 299.9633	October 15, 1996	40 CFR 260.10, definition of ''treatment''.
MAC R 299.9701(2) (removal) and (3) renumbered as (2)	September 11, 2000	40 CFR 264.140(a) and (c).
MAC R 299.9713(6) and (7)	October 15, 1996	40 CFR 264.101(b).
MAC R 299.11004(4)	September 11, 2000	40 CFR part 263.
MAC R 299.11007(2)	September 11, 2000	None.
MAC R 299.11008(2)	September 11, 2000	None.

G. Where Are the Revised State Rules Different from the Federal Rules?

Michigan hazardous waste management regulations are more stringent than the corresponding federal regulations in a number of different areas. The more stringent provisions are being recognized as a part of the federally-authorized program and are federally enforceable. More stringent provisions in the state's authorization application include, but are not limited to, the following:

1. At MAC R 299.9203(7)(a) and (c), Michigan's exclusion differs from the corresponding Federal counterpart at 40 CFR 261.3(g)(2)(i) in that the exclusion only applies to mixtures generated as a result of a cleanup conducted at the individual site of generation pursuant to parts 31, 111, 201, or 213 of Michigan's Act 451 (1994 PA 451, MCL 324.101, known as the natural resources and environmental protection act), or CERCLA.

2. At R 299.9306(7)(d)(i) and (ii) and (g), Michigan's rules contain containment, inspection, recordkeeping and emergency requirements that are not found in the Federal counterpart at 40 CFR 262.34(g)(4)(i)(A) and (B) and (g)(4)(v), respectively.

3. At R 299.9307(7)(d)(i)(C), Michigan does not allow containment buildings, as does 40 CFR 262.34(g)(4)(i)(C).

4. At R 299.9639(5)(e), Michigan does not allow permits as a shield as does the Federal counterpart at 40 CFR § 264.555(e)(5).

We consider the following state requirements to be beyond the scope of the Federal program, though this list may not be exhaustive:

At R 299.9104 and R 299.9203, Michigan regulates more hazardous wastes than the Federal counterpart at 40 CFR 266.210. The hazardous wastes that are regulated by Michigan but not by EPA are broader-in-scope requirements.

Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although you must comply with these requirements in accordance with state law, they are not RCRA requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization, until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian country within the state, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

EPA will continue to implement and administer the RCRA program in Indian country. It is EPA's long-standing position that the term ''Indian lands'' used in past Michigan hazardous waste approvals is synonymous with the term ''Indian country.'' *Washington Dep't of Ecology* v. *U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). See 40 CFR 144.3 and 258.2.

J. What Is Codification and Is EPA Codifying Michigan's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and does not impose requirements other than those already imposed by state law (*see* **SUPPLEMENTARY INFORMATION**, Section A. Why Are Revisions to State Programs Necessary?; and Section C. What Is the Effect of Today's Authorization Decision?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 19, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, or 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.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it is not based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they met criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 9, 2005.

Margaret M. Guerriero,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23213 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 121

RIN 0906AA62

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth the Secretary's proposal to include intestines within the definition of organs covered by the rules governing the operation of the Organ Procurement and Transplantation Network. The Secretary further proposes a corresponding change to the definition of human organs covered by section 301 of the National Organ Transplant Act, as amended.

DATES: To be considered, comments on this proposed rule must be submitted by January 23, 2006. Subject to consideration of the comments submitted, the Department intends to publish final regulations.

ADDRESSES: You may submit comments, identified by RIN 0906AA62, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.hrsa.gov/*. Follow the instructions for submitting comments on the Agency Web site.
- E-mail: *jburdick@hrsa.gov*. Include RIN 0906AA62 in the subject line of the message.
- Fax: 301–594–6095.
- Mail: Jim Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857.
- Hand Delivery/Courier: Jim Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.hrsa.gov/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857 weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. To schedule an appointment to view public comments, phone (301) 443–7757.

FOR FURTHER INFORMATION CONTACT: Jim Burdick, M.D. at the above address; telephone number (301) 443–7577.

SUPPLEMENTARY INFORMATION:

Adding Intestines to the Definition of Organs Covered by the Rules Governing the Operation of the Organ Procurement and Transplantation Network (OPTN)

Based upon a review of intestinal transplants, the Secretary believes that intestines should now be included within the definition of organs covered by the rules governing the operation of the OPTN (42 CFR part 121) (hereinafter the final rule). This notice sets forth the history of intestinal transplants, the factors that have persuaded the Department of the advisability of including intestines within the ambit of the regulations governing the operation of the OPTN, and the anticipated consequences of this proposal.

The first successful intestinal transplant was performed in 1989. Intestinal transplantation may be considered for patients with irreversible intestinal failure due to surgery, trauma, or acquired or congenital disease who cannot be managed through the intravenous delivery of nutrients, also referred to as total parenteral nutrition (TPN). Although intestinal transplants have been performed for years, considerable morbidity and mortality have limited widespread clinical use. Complications are frequent and include acute and chronic rejection, lymphoproliferative disease, and serious infections such as cytomegalovirus disease. For patients who received intestinal transplants in the United States from January 2000 through June 2002, one-year graft and patient survival rates were 67 percent and 81 percent respectively for adults, and 58 percent and 65 percent respectively for pediatric recipients. Despite the shortcomings, the number of candidates for intestinal transplants and the number of intestinal

transplants performed annually is increasing.

The OPTN first adopted voluntary intestinal organ allocation policies and began to maintain a list of patients waiting for intestinal transplants in 1993. On December 31, 1993, only 43 candidates were listed on the intestinal transplant waiting list, compared to 169 candidates on this list on October 24, 2003. The number of intestinal transplants performed annually has more than tripled from 34 transplants in 1993 to 109 transplants in 2002. However, the volume of transplants per transplant center is relatively small. Ten transplant centers performed one or more intestinal transplants in 2002; only five of these centers performed ten or more transplants. Overall median waiting time was 319 days for patients added to the intestinal transplant waiting list in 2001.

According to the OPTN, intestinal organ allocation may include the stomach, small and/or large intestine, or any portion of the gastrointestinal tract as determined by the medical needs of individual patients (OPTN Policy 3.11). OPTN voluntary policies are available at *http://www.optn.org/policiesandbylaws/policies.asp.* In addition to allocation for isolated intestinal transplants, the OPTN addresses allocation of the liver-intestine combination and multiple organs.

The nature of the regulatory framework governing the operation of the OPTN underlies the importance of including intestines within the definition of organs covered by the final rule. Under the final rule, the OPTN must submit proposed policies for review and approval by the Secretary. 42 CFR 121.4. Upon consideration of public comments on proposed policies that are considered significant, the Secretary will determine whether to make such proposed policies enforceable in accordance with § 121.10 of the final rule. Any transplant hospital that fails to comply with any allocation policy approved as enforceable by the Secretary under this process will be subject to the enforcement sanctions delineated in § 121.10 of the rule, including termination from the Medicare and Medicaid programs.

The Secretary is legally obliged, as part of his responsibilities in administering the Medicare and Medicaid programs, to require hospitals that transplant organs to comply with the rules and requirements of the OPTN as a condition of their participation in Medicare and Medicaid. 42 U.S.C. 1320b–8(a)(1)(B). Because intestines are not included within the final rule's definition of organs, the Secretary cannot currently make any intestinal allocation policy enforceable. If intestines are added as covered organs under the final rule as proposed here, the Secretary could take appropriate enforcement actions against a transplant hospital for failing to comply with the OPTN's intestinal allocation policy if such a policy has been approved as enforceable by the Secretary under the process outlined above. This enforcement authority is particularly significant given that many recipients of transplanted intestines receive such organs together with other organs covered under the final rule. It is necessary to ensure that intestinal organ allocation, whether pertaining to isolated intestinal transplants or combined/multi-organ transplants, is consistent with the goal of an equitable national system for organ allocation, as described in the final rule. Enforcing allocation for organs currently covered under the final rule, such as livers, would be difficult in instances in which intestines are transplanted together with such organs if intestinal allocation is not subject to the Secretary's enforcement authority.

As the field of intestinal transplantation evolves, it will become more critical that intestinal organ allocation keeps pace with advances in the field; that policy development include performance indicators to assess whether the goals of an equitable transplant system are being achieved; that the Secretary has the authority to make those policies enforceable; and that patients and physicians have timely access to accurate data that will assist them in making decisions regarding intestinal transplantation. Upon consideration of the foregoing factors, and in order to achieve the most equitable and medically effective use of donated organs, the Secretary announces his conclusion that intestines should explicitly be added to the definition of organs covered by the final rule.

Public Participation

Additional information on the submission of comments and/or the rulemaking process can be obtained from the Director, Division of Policy Review and Coordination, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 14A–11, Rockville, Maryland 20857.

Soliciting Public Comment as to Whether Any Other Organs Should Be Covered by the Rules Governing the Operation of the OPTN

The Secretary also invites public comment as to the advisability of including any other organ within the ambit of the final rule. In addition to intestines, there may be other organs not currently covered under the final rule that, as a result of factors such as medical advances, a growing demand for transplantation, and concerns about equitable allocation, should be considered for inclusion under the final rule.

Including Intestines Within the Definition of Human Organs Covered by Section 301 of NOTA

The Secretary further proposes including intestines within the definition of human organs covered by section 301, as amended, of the National Organ Transplant Act (NOTA) (hereinafter section 301), which prohibits the purchase or sale of human organs for human transplantation. Specifically, section 301, as amended, provides as follows:

Prohibition of Organ Purchases

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term ''human organ'' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term ''valuable consideration'' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term ''interstate commerce'' has the meaning prescribed for it by section 321(b) of Title 21.

42 U.S.C. 274e. When it originally enacted NOTA, Congress defined the term ''human organ,'' within the

meaning of this section as ''the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin and any other human organ specified by the Secretary of Health and Human Services by regulation.'' NOTA, Pub. L. 98–507, Title III, section 301, 98 Stat. 2346–2347 (1984). This section was subsequently amended by Congress to include fetal organs, as well as subparts of the specified organs. Pub. L. 100–607, Title IV, section 407, 102 Stat. 3116 (1988).

As set forth by statute, Congress authorized the Secretary to add additional organs to the definition of ''human organ'' covered by section 301 through rulemaking in order to include the transplantation of additional human organs within section 301's prohibition. Through this notice, the Secretary proposes to add intestines to the list of human organs covered by section 301. The Secretary proposes adding a new section to part 121 to effectuate this addition, which section 301 authorizes the Secretary to make by rulemaking.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. Since independent and hospital-based organ procurement organizations (OPOs) are not considered small rural hospitals, because OPOs generally service large geographical areas, a regulatory flexibility analysis under the RFA and a rural impact analysis under section 1102(b) of the Act are not required.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this proposed rule would modify the regulations governing the OPTN and section 301 of NOTA based on legal authority.

Impact of the New Rule

This proposed rule would have the effect of including transplanted human intestines within the ambit of the regulations governing the operation of the OPTN, and would include transplanted human intestines within the prohibition set forth at section 301 of NOTA. If implemented, the proposals set forth in this rule would authorize the Secretary to take enforcement actions against entities violating OPTN policies pertaining to the transplantation of intestines once such policies are approved as enforceable by the Secretary. In addition, if this proposal is implemented, individuals violating section 301 of NOTA with respect to intestinal transplants would be subject to criminal penalties.

Paperwork Reduction Act of 1995

The amendments proposed in this notice of proposed rulemaking will not impose any additional data collection requirements beyond those already imposed under the current final rule, which have been approved by the Office of Management and Budget (OMB No. 0915–0157). The currently approved data collection includes worksheets and burden for intestinal transplants.

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: March 1, 2005.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: May 20, 2005.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register November 18, 2005.

Accordingly, 42 CFR part 121 is proposed to be amended as set forth below:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

1. The authority citation for part 121 is revised to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

2. Amend § 121.1 as follows:

a. Revise paragraph (a) by replacing the phrase ''this part apply'' with the phrase ''this part, with the exception of § 121.13, apply.''

b. Redesignate paragraph (b) as paragraph (c).

c. Add a new paragraph (b).

The revision reads as follows:

§ 121.1 Applicability.

* * * * *

(b) The provisions of § 121.13 apply to the prohibition set forth in section 301 of the National Organ Transplant Act, as amended.

* * * * *

3. Revise the definition of ''organ'' in § 121.2 to read as follows:

§ 121.2 Definitions.

* * * * *

Organ means a human kidney, liver, heart, lung, pancreas, or intestine.

* * * * *

4. Add a new § 121.13 to read as follows:

§ 121.13 Definition of Human Organ Under section 301 of the National Organ Transplant Act, as amended.

''Human organ,'' as covered by section 301 of the National Organ Transplant

Act, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, skin, and intestine (or any subpart thereof).

[FR Doc. 05–23149 Filed 11–22–05; 8:45 am]

BILLING CODE 4160–15–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1182

RIN 3137–AA17

Institute of Museum and Library Services; Implementation of the Privacy Act of 1974

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Proposed rule.

SUMMARY: The Institute of Museum and Library Services (Institute) in publishing a proposed rule setting forth regulations under the Privacy Act of 1974 and conforming to the President's memorandum of June 1, 1998—Plain Language in Government Writing. These regulations establish procedures by which an individual may determine whether a system of records maintained by the Institute contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also establish exemptions from certain Privacy Act requirements for all or part of certain systems or records maintained by the Institute.

DATES: Comments are invited and must be received by no later than December 23, 2005.

ADDRESSES: Address all comments concerning this proposed rule to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Submit electronic comments to *nweiss@imls.gov.* Telephone: (202) 653–4784. Facsimile: (202) 653–4625.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., Ninth Floor, Washington, DC 20036. E-mail: *nweiss@imls.gov.* Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION: The Institute operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the Institute.

This proposed rules adds Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. The new regulations provide additional detail concerning several provisions of the Privacy Act, and are intended to increase understanding of the Institute's Privacy Act policies. The Institute is authorized to propose the new regulations under 5 U.S.C. 552a(f) of the Privacy Act.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

The regulatory repeal proposed in this rulemaking eliminates outdated regulations and makes technical amendments to reflect Congress' reauthorization of the Institute of Museum and Library Services under The Museum and Library Services Act of 2003, Public Law 108–81 (September 25, 2003). These changes are proposed to ensure that all regulations governing provision of grants made by the Institute are consistent with current statutory guidance and agency practice. The public is invited to make substantive comment on any of these proposed changes.

Comments should be submitted in writing to the address indicated in the **ADDRESSES** section of this document. All comments received will be available upon request for public inspection at Institute of Museum and Library Services, 1800 M Street, NW., Ninth Floor, Washington, DC 20036. All written comments received by the date indicated in the **DATES** section of this document and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing. We will not consider comments submitted anonymously. However, if you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

II. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The 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 entitlements, 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.

The Proposed rules would add Privacy Act regulations to subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. The new regulations provide additional detail concerning several provisions of the Privacy Act, and are intended to increase understanding of the Institute's Privacy Act policies. As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this proposed rule would add Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it adds Privacy Act regulations to Subchapter E (45 CFR part 1182), replacing the existing regulations in Subchapter A (45 CFR part 1115) with regard to the Institute. An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local,

and tribal governments, or by the private sector, of $100 million or more as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Institute has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian tribes (E.O. 13175)

In accordance with Executive Order 13175, the Institute has evaluated this proposed rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1182

Privacy.

Dated: November 16, 2005.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

For the reasons stated in the preamble, the Institute proposes to amend Title 45, Code of Federal Regulations, Subchapter E, by adding part 1182 to read as follows:

PART 1182—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1182.1 Purpose and scope of these regulations.
1182.2 Definitions.
1182.3 Inquiries about the Institute's systems of records or implementation of the Privacy Act.
1182.4 Procedures for notifying the public of the Institute's systems of records.
1182.5 Procedures for notifying government entities of the Institute's proposed changes to its systems of records.
1182.6 Limits that exist as to the contents of the Institute's systems of records.
1182.7 Institute procedures for collecting information from individuals for its records.
1182.8 Procedures for acquiring access to Institute records pertaining to an individual.
1182.9 Identification required when requesting access to Institute records pertaining to an individual.
1182.10 Procedures for amending or correcting an individual's Institute record.
1182.11 Procedures for appealing a refusal to amend or correct an Institute record.
1182.12 Fees charged to locate, review, or copy records.
1182.13 Policies and procedures for Institute disclosure of its records.
1182.14 Procedures for maintaining accounts of disclosures made by the Institute from its systems of records.
1182.15 Institute responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems.
1182.16 Procedures to ensure that Institute employees involved with its systems of records are familiar with the requirements and of the Privacy Act.
1182.17 Institute systems of records that are covered by exemptions in the Privacy Act.
1182.18 Penalties for obtaining an Institute record under false pretenses.
1182.19 Restrictions that exist regarding the release of mailing lists.

Authority: 5 U.S.C. 552a(f).

§ 1182.1 Purpose and scope of these regulations.

The regulations in this part set forth the Institute's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Institute. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an Institute system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements, prescribe fees to be charged for copying records, and establish exemptions from certain requirements of the Act for certain Institute systems or components thereof.

§ 1182.2 Definitions.

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in this executive branch of the Federal Government, including the Executive Office of the President or any independent regulatory agency.

(b) *Business day* means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

(c) *Director* means the Director of the Institute, or his or her designee;

(d) *General Counsel* means the General Counsel of the Institute, or his or her designee.

(e) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(f) *Institute* means the Institute of Museum and Library Services;

(g) *Institute system* means a system of records maintained by the Institute;

(h) *Maintain* means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

(i) *Privacy Act* or *Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(j) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency and contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(k) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(l) *Subject individual* means the individual to whom a record pertains. Uses of the terms ''I'', '' you'', ''me'', and other references to the reader of the regulations in this part are meant to apply to subject individuals as defined in this paragraph (1); and

(m) *System of records* means a group of records under the control of any

agency from which information is retrieved by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual.

§ 1182.3 Inquiries about the Institute's systems of records or implementation of the Privacy Act.

Inquiries about the Institute's systems of records or implementation of the Privacy Act should be sent to the following address: Institute of Museum and Library Services; Office of the General Counsel; 1800 M Street, NW., 9th Floor, Washington, DC 20036.

§ 1182.4 Procedures for notifying the public of the Institute's systems of records.

(a) From time to time, the Institute shall review its systems of records in the **Federal Register**, and publish, if necessary, any amendments to those systems of records. Such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Institute.

(b) At least 30 days prior to publication of information under paragraph (a) of this section, the Institute shall publish in the **Federal Register** a notice of its intention to establish any new routine uses of any of its systems of records, thereby providing the public an opportunity to comment on such uses. This notice published by the Institute shall contain the following:

(1) The name of the system of records for which the routine use is to be established;

(2) The authority for the system;

(3) The purpose for which the record is to be maintained;

(4) The purposed routine use(s);

(5) The purpose of the routine use(s); and

(6) The categories of recipients of such use.

(c) Any request for additions to the routine uses of Institute systems should be sent to the Office of the General Counsel (see § 1182.3).

(d) Any individual who wishes to know whether an Institute system contains a record pertaining to him or her should write to the Office of the General Counsel (see § 1182.3). Such individuals may also call the Office of the General Counsel at (202) 653–4787 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make an inquiry in person. Inquiries should be present in writing and should specifically identify the Institute systems involved. The Institute will attempt to respond to an inquiry regarding whether a record exists within 10 business days of receiving the inquiry.

§ 1182.5 Procedures for notifying government entities of the Institute's proposed changes to its systems of records.

When the Institute proposes to establish or significantly change any of its systems of records, it shall provide adequate advance notice of such proposal to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals. This report will be submitted in accordance with guidelines provided by the OMB.

§ 1182.6 Limits that exist as to the contents of the Institute's systems of records.

(a) The Institute shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. In addition, the Institute shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Institute shall not be required to update retired records.

(b) The Institute shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 1182.7 Institute procedures for collecting information from individuals for its records.

The Institute shall collect information, to the greatest extent practicable, directly from you when the information may result in adverse determination about your rights, benefits, or privileges under Federal programs. In addition, the Institute shall inform you of the following, either on the form it uses to collect the information or on a separate form that you can retain, when it asks you to supply information:

(a) The statutory or executive order authority that authorizes the solicitation of the information;

(b) Whether disclosure of such information is mandatory of voluntary;

(c) The principal purpose(s) for which the information is intended to be used;

(d) The routine uses that may be made of the information, as published pursuant to § 1182.4; and

(e) Any effects on you of not providing all or any part of the required or requested information.

§ 1182.8 Procedures for acquiring access to Institute records pertaining to an individual.

The following procedures apply to records that are contained in an Institute system:

(a) You may request review of records pertaining to you by writing to the Office of the General Counsel (see § 1182.3). You also may call the Office of the General Counsel at (202) 653–4787 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make such a request in person. A request for records should be presented in writing and should identify specifically the Institute systems involved.

(b) Access to the record, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 1182.9 are satisfied and the record is determined otherwise to be releasable under the Privacy Act and these regulations. The Institute shall provide you an opportunity to have a copy made of any such record about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 1182.12.

(c) The Institute will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Institute will acknowledge, within 10 business days, mailed requests or personal requests for documents that are not immediately available, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your record. The Institute may require that you furnish a written statement authorizing discussion of your record in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Institute, access to such records might have an adverse effect upon you. When such a determination has been made, the Institute may refuse to disclose such information directly to you. The Institute will, however, disclose this

information to a licensed physician designated by you in writing.

§ 1182.9 Identification required when requesting access to Institute records pertaining to an individual.

The Institute shall require reasonable identification of all individuals who request access to records in an Institute system to ensure that they are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you shall be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Institute systems that contain particularly sensitive and/or detailed personal information, the Institute reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) If you request disclosure by mail, the Institute will request such information as may be necessary to ensure that you are properly identified. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include certification that a duly commissioned notary public of any State or territory (or a similar official, if the request is made outside of the United States) received an acknowledgment of identity from you.

(c) If you are unable to provide suitable documentation or identification, the Institute may require a signed, notarized statement asserting your identity and stipulating that you understand that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

§ 1182.10 Procedures for amending or correcting an individual's Institute record.

(a) You are entitled to request amendments to or corrections of records pertaining to you pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 1182.3).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Institute system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Institute will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the institute function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You also will be informed that you may appeal this refusal in accordance with § 1182.11.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

§ 1182.11 Procedures for appealing a refusal to amend or correct an Institute record.

(a) You may appeal a refusal to amend or correct a record to the Director. Such appeal must be made in writing within 10 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 1182.3), should indicate that it is an appeal, and should include the basis for the appeal.

(b) The Director will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Director shall render his or her decision on your appeal within 30 business days of its receipt by the Institute, unless the Director, for good cause shown, extends the 30-day period. Should the Director extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Director determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Institute a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Director's determination under 5 U.S.C. 552a(g)(1)(a).

(f) Whenever you submit a statement of disagreement to the Institute in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of disagreement will be disclosed with the record. If the Institute deems it appropriate, a concise statement of the Director's reasons for denying your appeal also may be disclosed with the record. While you will have access to this statement of the Director's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Director's reasons for denying your appeal.

§ 1182.12 Fees charged to locate, review, or copy records.

(a) The Institute shall charge no fees for search time or for any other time expended by the Institute to review a record. However, the Institute may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (*e.g.,* computer printout where no screen

reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of $0.10 per page. Where records are not susceptible to photocopying (*e.g.,* punch cards, magnetic tapes, or oversize materials), you will be charged actual cost as determined on a case-by-case basis. A copying fee totaling $3.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you.

(d) A copying fee shall not be charged or, alternatively, it may be reduced, when the General Counsel determines, based on a petition, that the petitioning individual is indigent and that the Institute's resources permit a waiver of all or part of the fee.

(e) All fees shall be paid before any copying request is undertaken. Payments shall be made by check or money order payable to the ''Institute of Museum and Library Services.''

§ 1182.13 Policies and procedures for Institute disclosure of its records.

(a) The Institute not disclose any record that is contained in a system of records to any person or to another agency, except pursuant to a written request by or with the prior written consent of the subject individual, unless disclosure of the record is:

(1) To those officers or employees of the Institutes who maintain the record and who have a need for the record in the performance of their official duties;

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request to the Institute formulated in accordance with the National Foundation on the Arts and the Humanities regulations published at 45 CFR part 1100;

(3) For a routine use as published in the annual notice in the **Federal Register**;

(4) To the Census Bureau for purposes of planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Institute with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continue preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Institute for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. The Institute also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the General Accounting Office;

(11) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e); or

(12) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Institute shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(b) Before disseminating any record about any individual to any person other than an Institute employee, the Institute shall make reasonable efforts to ensure that such records are, or at the time they were collected were, accurate, complete, timely, and relevant for Institute purposes. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 1182.14 Procedures for maintaining accounts of disclosures made by the Institute from its systems of records.

(a) The Office of the General Counsel shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting also shall contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to Institute employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Institute shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Institute shall make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 1182.8. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1182.13(a)(7).

§ 1182.15 Institute responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems.

The Chief Information Officer has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic records systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) Manual systems.

(1) Records contained in a system of records as defined in this part may be used, held, or stored only here facilities re adequate to prevent unauthorized

access by persons within or outside the Institute.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category also shall be maintained in locked filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Institute, for routine uses as defined in § 1182.1 as to any given system, or for such other uses as may be provided in this part.

(4) Other than for access within the Institute to persons needing such records in the performance of their official duties or routine uses as defined in § 1182.1, or such other uses as provided in this part, access to records within a system of records shall be permitted only to he individual to whom the record pertains or upon his or her written request to the General Counsel.

(5) Access to areas where a system of record is stored will be limited to those persons whose duties require work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a log, as directed by the Chief Information Officer. The log shall be maintained at all times.

(6) The Institute shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records shall be in accordance with rules promulgated by the General Services Administration.

(b) Automated systems.

(1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cars, magnetic tapes, of discs, are not under the personal control of an authorized persons, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for in this part.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained of all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in he case of tapes or discs, degaussing, in accordance with regulations of the General Services Administration or other appropriate authority.

§ 1182.16 Procedures to ensure that Institute employees involved with its systems of records are familiar with the requirements and of the Privacy Act.

(a) The Director shall ensure that all persons involved in the design, development, operation, or maintenance of any Institute systems are informed of all requirements necessary to protect the privacy of subject individuals. The Director also shall ensure that all Institute employees having access to records receive adequate training in their protection, and that records have adequate and proper storage with sufficient security to assure the privacy of such records.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act, and the fact that the Institute may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 1182.17 Institute systems of records that are covered by exemptions in the Privacy Act.

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the Institute system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from the provisions of 5 U.S.C. 552a, except for subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6)(7), (9), (10), and (11); and (i), insofar as that Institute system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the Institute system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that Institute system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption of 5 U.S.C. 552a(j)(2).

(c) The Institute system entitled ''Office of the Inspector General Investigative Files'' is exempt from the provisions of the Privacy Act noted in this section because their application might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence; disclose investigative techniques or procedures; reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

§ 1182.18 Penalties for obtaining an Institute record under false pretenses.

(a) Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record from the Institute concerning an individual under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act also may be subject to prosecution under other statutes, including 18 U.S.C. 494, 495, and 1001.

§ 1182.19 Restrictions that exist regarding the release of mailing lists.

The Institute may not sell or rent an individual's name and address unless such action specifically is authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

[FR Doc. 05–23118 Filed 11–22–05; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2934; MM Docket No. 01–232, RM–10260]

Radio Broadcasting Services; Port Sanilac, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division, at the request of Charles Crawford, the proponent of a petition for rule making to allot Channel 225A at Port Sanilac, Michigan, 66 FR 48108 (September 18, 2001), dismisses the petition for rule making and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 01–232, adopted November 4, 2005, and released November 7, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The *Report and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, *see* U.S.C. 801(a)(1)(A).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22843 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2911; MB Docket No. 05–99; RM–11180]

Radio Broadcasting Services; Lake Charles, LA and Sour Lake, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a *Notice of Proposed Rule Making* (''*Notice*''), 70 FR 15047 (March 24, 2005), this *Report and Order* dismisses a rulemaking proceeding requesting that Channel 241C1, Station KYKZ(FM) (''KYKZ''), Lake Charles, Louisiana, be reallotted to Sour Lake, Texas, and the license of Station KYKZ be modified accordingly. Cumulus Licensing LLC (''Cumulus''), the proponent of this rulemaking, requested Commission approval for the withdrawal of its Petition for Rule Making and its expression of interest in implementing its rulemaking proposal. Cumulus filed a declaration that there are no agreements relating to the withdrawal of its Petition for Rule Making and that neither it nor any of its principals has received or will receive any consideration in connection with the withdrawal of its expression of interest in this proceeding.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–99, adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22846 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2916; MM Docket No. 01–230, RM–10258]

Radio Broadcasting Services; Deckerville, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division, at the request of Charles Crawford, the proponent of a petition for rule making to allot Channel 297A at Deckerville, Michigan, 66 FR 48108 (September 18, 2001), dismisses the petition for rule making and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 01–232, adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The *Report and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, *see* U.S.C. 801(a)(1)(A).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22845 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2906; MB Docket No. 05–279; RM–11276]

Radio Broadcasting Services; Black River and Old Forge, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Radioactive, LLC, permittee of an unconstructed FM station, Channel 223A, Old Forge, New York. Petitioner proposes to reallot Channel 223A from Old Forge to Black River, as the community's first local aural transmission service, and to modify the construction permit authorization for Channel 223A to reflect the change of community. The proposed coordinates for Channel 223A at Black River are 44–04–01 NL and 75–38–53 WL with a site restriction of 13.3 kilometers (8.3 miles) northeast of the community.

DATES: Comments must be filed on or before December 27, 2005, and reply comments on or before January 10, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel as follows: Radioactive, LLC, c/o Marissa G. Repp,

Esq., Hogan & Hartson LLP, 555 Thirteenth St., NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 05–279, adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 223A at Old Forge and by adding Black River, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22837 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2913; MB Docket No. 05–297; RM–11290]

Radio Broadcasting Services; Savanna, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford proposing the allotment of Channel 275A at Savanna, Oklahoma, as the community's first local aural transmission service. Channel 275A can be allotted to Savanna in compliance with the Commission's rules provided there is a site restriction of 7.0 kilometers (4.3 miles) south at coordinates 34–46–00 NL and 95–50–00 WL.

DATES: Comments must be filed on or before December 27, 2005, and reply comments on or before January 10, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 05–297 adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Savanna, Channel 275A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22838 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2914; MB Docket No. 05–296, RM–11289]

Radio Broadcasting Services; Okeene, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 268C3 at Okeene, Oklahoma, as a first local service. Channel 268C3 can be allotted at Okeene in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 km (11.9 miles) northeast of Okeene. The proposed coordinates for Channel 268C3 at Okeene are 36–15–00 North Latitude and 98–11–00 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before December 27, 2005, and reply comments on or before January 10, 2006.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Gene A. Bechtel, Esq., Law Office of Gene Bechtel, Suite 600, 1050 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–296, adopted November 2, 2005, and released November 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(C)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Okeene, Channel 268C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–22839 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2952; MB Docket No. 05–304, RM–11230]

Radio Broadcasting Services; Garwood, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 247A at Garwood, Texas, as a first local service. Channel 247A can be allotted at Garwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.0 km (9.3 miles) northwest of Garwood. The proposed coordinates for Channel 247A at Garwood are 29–33–29 North Latitude and 96–29–12 West Longitude. Any action in this proceeding is subject to the final outcome of MM Docket No. 00–148, which dismissed by a *Report and Order* proposals that conflict with this proposal for the allotment of Channel 247A at Garwood. The dismissal of those proposals is currently under review. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before January 3, 2006, and reply comments on or before January 17, 2006.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Gene A. Bechtel, Esq., Law Office of Gene Bechtel, Suite 600, 1050 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–304, adopted November 9, 2005, and released November 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(C)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Garwood, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–23183 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2949; MB Docket No. 05–305; RM–11137]

Radio Broadcasting Services; Lometa, and Richland Springs, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford, requesting the allotment of Channel 253A at Lometa, Texas, as the community's second local aural transmission service. In order for Channel 253A to be allotted to Lometa, the Notice proposes the substitution of Channel 235A for vacant Channel 252A at Richland Springs, Texas. Channel 253A can be allotted at Lometa, Texas, at Petitioner's requested site 11.7 kilometers (7.3 miles) northwest of the community at coordinates 31–18–45 NL and 98–26–45 WL. Channel 235A can be substituted for vacant Channel 252A at Richland Springs consistent with the minimum distance separation requirements of the Commission's Rules at Petitioner's requested site 9.4 kilometers (5.8 miles) southwest of the community at coordinates 31–12–30 NL and 99–00–45 WL.

DATES: Comments must be filed on or before January 3, 2006, and reply comments on or before January 17, 2006. Any counterproposal filed in this proceeding need only protect Stations KELI(FM), San Angelo, Texas, and Station KAMX(FM) Luling, Texas, as Class C0 allotments.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, and Stations KELI(FM) and KAMX(FM) as follows: Charles Crawford, 553 Bordeaux Avenue, Dallas, Texas 75205 (Petitioner) Jennifer M. Babin, Esq., Leventhal, Senter & Lerman PLLC, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809, Texas Infinity Radio, LP, 2000 K Street, NW., Suite 725, Washington, DC 20006–1809 (KELI(FM)); Kathleen Kirby, Esq., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006, Encore Broadcasting of San Angelo, LLC, 3303 N. Midkiff, Suite 115, Midland, Texas 79705.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–305, adopted November 9, 2005, and released November 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc. (BCPI), 445 12th Street, Suite C4–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 253A at Lometa, by removing Channel 252A and adding Channel 235A at Richland Springs.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–23184 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2965; MB Docket No. 05–295, RM–11280]

Radio Broadcast Services; Cumberland, KY; Glade Spring, Marion, and Weber City, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comment on a petition filed by JBL Broadcasting, Inc., proposing the upgrade to Channel 274C3 at Cumberland, Kentucky, the reallotment of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station WVEK–FM's license accordingly. To accommodate the reallotment, petitioner also proposed (1) the substitution of Channel 263A for vacant Channel 274A at Glade Spring, Virginia; and (2) the substitution of Channel 273A for Channel 263A at Marion, Virginia, and the modification of Station WOLD–FM's license accordingly. Channel 274C3 can be reallotted to Weber City in compliance

with the Commission's minimum distance separation with a site restriction of 10.9 kilometers (6.8 miles) south at petitioner's requested site. The reference coordinates for Channel 274C3 at Weber City are 36–31–36 North Latitude and 82–35–13 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before January 9, 2006, and reply comments on or before January 24, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Counsel for Petitioner as follows: Dennis J. Kelly, Esq., Post Office Box 41177, Washington, DC 20018.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MB Docket No. 05–295, adopted November 14, 2005, and released November 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

To accommodate the reallotment, Channel 263A can be substituted at Glade Spring with a site restriction of 14.0 kilometers (8.7 miles) east at petitioner's requested site; and Channel 273A can be substituted at Marion with a site restriction of 2.5 kilometers (1.6 miles) north at petitioner's requested site. The reference coordinates for Channel 263A at Glade Spring are 36–47–50 North Latitude and 81–36–52 West Longitude; and the reference coordinates for Channel 273A at Marion are 36–54–10 North Latitude and 81–32–27 West Longitude. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station WVEK–FM without entertaining competing expressions of interest in the use of Channel 274C3 at Weber City, Virginia, or requiring petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Cumberland, Channel 274A.

3. Section 73.202(b), the Table of FM Allotments under Virginia, is amending by removing Channel 274A and adding Channel 263A at Glade Spring; and by removing Channel 263A and adding Channel 273A at Marion; and by adding Weber City, Channel 274C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–23185 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2943; MB Docket No. 05–310; RM–11292]

Radio Broadcasting Services; Humboldt and Pawnee City, NE, and Valley Falls, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Cumulus Licensing LLC, (''Petitioner'') permittee of an unbuilt construction permit for Channel 244A at Humboldt, Nebraska. Petitioner proposes to substitute Channel 245C2 for Channel 244A at Humboldt, reallot Channel 245C2 to Valley Falls, Kansas, and to modify the construction permit authorization to reflect these changes. The proposed coordinates for Channel 245C2 at Valley Falls are 39–15–00 NL and 95–36–30 WL with a site restriction of 16.5 kilometers (10.2 miles) southwest of the community. In addition, Petitioner proposes to allot Channel 256A at Pawnee City, Nebraska. The proposed coordinates for Channel 256A at Pawnee City are 39–59–28 NL and 96–07–50 WL with a site restriction of 13.7 kilometers (8.2 miles) south of the community.

DATES: Comments must be filed on or before January 3, 2006, and reply comments on or before January 17, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner's counsel as follows: Mark N. Lipp, Esq., Vinson & Elkins L.L.P., 1455 Pennsylvania Ave., NW., Suite 600, Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05–310, adopted November 9, 2005, and released November 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th

Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Valley Falls, Channel 245C2.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Humboldt, Channel 244A, and by adding Pawnee City, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–23186 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT31

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To Delist the Mexican Bobcat (Lynx rufus escuinapae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are reopening the comment period for the proposed rule to delist the Mexican bobcat (*Lynx rufus escuinapae*) under the Endangered Species Act of 1973 (Act), as amended. The proposed rule was published and the public comment period initially opened on May 19, 2005 and the comment period closed on August 17, 2005. We are now reopening the comment period so that we may obtain comments from additional peer reviewers and other interested persons. Comments previously submitted do not need to be resubmitted because they will be incorporated into the public record as part of this comment period and will be fully considered in the final determination.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before December 23, 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

ADDRESSES: Submit comments, information, and questions to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203, USA; or by fax (703–358–2276); or by e-mail (*scientificauthority@fws.gov*). Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. To obtain a copy of the May 19, 2005 proposed rule, you can download or print it from *http://www.fws.gov/international/*, or you can request a copy from the Division of Scientific Authority by writing to the above address or calling 703–358–1708.

FOR FURTHER INFORMATION CONTACT: Dr. Javier Alvarez at the above address; or by telephone (703–358–1708), fax (703–358–2276), or e-mail (*scientificauthority@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1996, the Service received a petition dated June 30, 1996, from the National Trappers Association, Inc., Bloomington, Illinois. The petition requested that we delist the Mexican bobcat under the Act. On July 2, 2003, we published in the **Federal Register** (68 FR 39590) a positive 90-day finding on the National Trappers Association petition, thereby initiating a public comment period and status review for the species. Based on the comments received and status review, on May 19, 2005, we published in the **Federal Register** (70 FR 28895) a rule proposing to delist the Mexican bobcat under the Act. The public comment period on that proposed rule closed on August 17, 2005. In our final rule, we will address the comments received during that 90-day comment period as well as the comments received during the reopening of the comment period initiated by this document.

Public Comments Solicited

The Service intends that any final action resulting from the proposed rule will be based on the most accurate and up-to-date information possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. Comments particularly are sought concerning the taxonomic validity and population status of the Mexican bobcat, specifically the putative subspecies *Lynx rufus escuinapae* and not other subspecies or populations of bobcat in Mexico. We request that you do not resubmit comments sent to us during the previous comment period. Comments previously submitted will be incorporated into the public record as part of this comment period and will be fully considered in the final determination. Final action on the proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final action that differs from the proposed rule.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home addresses, and we will honor these requests to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your

name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we are seeking expert opinions of at least three appropriate independent specialists regarding the proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis. Two of the three invited peer reviewers submitted comments during the previous comment period, while the third submitted comments following the close of the comment period. Therefore, we are reopening the comment period to allow consideration of the existing peer reviews as well as the submission of comments by additional peer reviewers.

Author

The primary author of this notice is Dr. Javier Alvarez (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 27, 2005.

Marshall Jones,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 05–23032 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 111605A]

RIN 0648–AS15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13

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

ACTION: Availability of Fishery Management Plan amendment; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 13 to the FMP for review, approval, and implementation by NMFS. Amendment 13 would revise Federal permitting requirements for the shrimp fishery of the Gulf of Mexico exclusive economic zone (EEZ), including the establishment of a moratorium on the issuance of Federal commercial shrimp vessel permits; revision of existing regulations regarding reporting and recordkeeping in the shrimp fishery; and establishment of stock status criteria for the various shrimp stocks. The intended effects of Amendment 13 are to stabilize participation in the shrimp fishery of the Gulf of Mexico EEZ and provide better information by which to manage the fishery.

DATES: Written comments must be received no later than 5 p.m., eastern time, on January 23, 2006.

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

- E-mail: *0648–AS15.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS15–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Steve Branstetter.

Copies of Amendment 13, which includes an Environmental Assessment, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis, are available from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; phone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Amendment 13, if implemented, would establish a requirement for royal red shrimp vessels fishing in the Gulf of Mexico EEZ to possess a royal red shrimp endorsement to their Gulf of Mexico Federal shrimp vessel permit. The royal red shrimp fishery in the Gulf of Mexico is a very small component of the overall shrimp fishery, and there are very limited data on this fishery on which to make management decisions. Specifically identifying royal red shrimp harvesters through a permit endorsement would provide the opportunity to gather needed biological, social, and economic data to appropriately manage this fishery.

Amendment 13 proposes the establishment of a 10–year moratorium on the issuance of new Federal shrimp vessel permits. If implemented, permits under the moratorium would be fully transferable, allowing permittees the flexibility to enter or exit the fishery as they choose. To be eligible for a commercial shrimp vessel permit under the moratorium, vessels must have been issued a valid commercial shrimp vessel permit by NMFS prior to and including December 6, 2003. Additionally, an owner who sold his qualified vessel, had his qualified vessel repossessed, or otherwise lost use of his qualified vessel (i.e., damage, sinking, unaffordable repairs), but who obtained a valid commercial shrimp vessel permit for the same vessel or another vessel equipped for offshore shrimp fishing (at least 5 net tons) prior to the date of publication of the final rule implementing this amendment would be eligible to renew such permit under the moratorium.

Amendment 13, if implemented, would establish a standardized method to regularly monitor, report, and estimate the bycatch in the shrimp fishery of the Gulf of Mexico, in compliance with § 303(a)(11) of the Magnuson-Stevens Act. Amendment 13 proposes to establish a program whereby a sample of Federally permitted shrimp vessels would be equipped with electronic logbooks (ELBs) provided by NMFS, and a sample of Federally permitted shrimp vessels would carry observers. The ELB program would provide better information regarding effort, and the observer program would provide information on catch, effort, and bycatch. Amendment 13 also proposes to revise data collection requirements to include mandatory reporting of landings and vessel and gear characteristics.

Finally, to better comply with the Magnuson-Stevens Act requirements,

Amendment 13 proposes to establish or modify biological reference points for brown, pink, and white shrimp, and stock status determination criteria for royal red shrimp. The Magnuson-Stevens Act requires that each FMP define reference points in the form of maximum sustainable yield (MSY) and optimum yield (OY), and specify objective and measurable criteria for identifying when the fishery is overfished and/or undergoing overfishing. Status determination criteria include a minimum stock size threshold (MSST) to indicate when a stock is overfished and a maximum fishing mortality threshold (MFMT) to indicate when a stock is undergoing overfishing. Together, these four parameters (MSY, OY, MSST, and MFMT) provide fishery managers with the tools to determine the status of a fishery at any given time and assess whether management measures are achieving established goals.

A proposed rule that would implement measures outlined in Amendment 13 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by January 23, 2006, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: November 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23203 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 225
Wednesday, November 23, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 17, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Stamp Program Application.

OMB Control Number: 0584–0008.

Summary of Collection: Section 9(a) of the Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 *et seq.*) requires retail food stores and meal services (firms) to submit applications to the Food and Nutrition Service (FNS) for approval prior to participating in the Food Stamp Program. FNS field offices reviews a firm's applications to determine if the applicant individual and firm meet the eligibility requirements and make a determination to deny or accept the firm's application to redeem Food Stamp Program benefits. FNS will collect information using forms FNS–252, Food Stamp Program Application for Store, FNS 252–2, Meal Service Application, and FNS–252–C, Corporate Supplemental Application.

Need and Use of The Information: FNS will collect information to determine a firm's eligibility for participation in the Food Stamp Program, program administration, compliance monitoring and investigations, and for sanctioning stores found to be violating the program. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail food store, wholesale food concern, or food service organization continues to meet eligibility requirements. Disclosure of information other than Employer Identification Numbers and Social Security Numbers may be made to Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal or State laws, or regulations issued under those law.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 45,765.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,452.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–23141 Filed 11–22–05; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Natapoc Ridge Forest Restoration Project, Okanogan-Wenatchee National Forests, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On November 15, 2005, the USDA, Forest Service, Okanogan-Wentachee National Forests, published a Notice of Intent in the **Federal Register** (70 FR 69308) to prepare an environmental impact statement (EIS) for the Natapoc Ridge Forest Restoration Project. The Notice of Intent is being revised to change the expected filing and review date of the draft environmental impact statement (EIS) to April 2006 and the final EIS to July 2006. The original Notice of Intent identified these dates incorrectly as April 2005 and July 2005.

FOR FURTHER INFORMATION CONTACT: Steve Willet, Natapoc Project Leader, USDA Forest Service, Wenatchee River Ranger District, 600 Sherbourne, Leavenworth, Washington 98826; phone (509) 548–6977, Ext. 288.

Dated: November 16, 2005.

James L. Boynton,

Forest Supervisor.

[FR Doc. 05–23158 Filed 11–22–05; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[05–MN–S]

Designation for the State of Minnesota Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Grain Inspection, Inc. (Jamestown), Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), North Dakota Grain Inspection Service, Inc. (North Dakota), Northern Plains Grain Inspection Service, Inc. (Northern Plains), D. R. Schaal Agency, Inc. (Schaal), Sioux City Inspection and Weighing Service Company (Sioux City), all officially designated agencies, and a company proposing to do business as State Grain Inspection, Inc. (State Grain), a subsidiary of National Quality Inspection, Inc., to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 2006.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 17, 2005, **Federal Register** (70 FR 48370), GIPSA announced that the Minnesota Department of Agriculture (Minnesota) asked GIPSA to voluntarily cancel their designation to provide domestic grain inspection and weighing services within the entire State of Minnesota, effective November 9, 2005. Subsequently, Minnesota informed GIPSA that they would continue to provide these services until December 31, 2005. Minnesota's designation ends effective December 31, 2005, and GIPSA asked persons or organizations interested in providing official grain inspection and weighing services in Minnesota, except the export port locations, to submit an application for designation by September 16, 2005.

There were nine applicants for the State of Minnesota geographic area. Jamestown, Mid-Iowa, North Dakota, Northern Plains, Schaal, and Sioux City, all officially designated agencies, a company proposing to do business as Minnesota Grain Inspection, Inc. (Minnesota Grain), a subsidiary of Société Générale de Surveillance (SGS) North America, Inc., and State Grain each applied for designation to provide official services in all or part of the entire geographic area named in the August 17, 2005, **Federal Register**. All of the applicants named above indicated they would be willing to accept more or less geographic area in order to provide needed service to all requestors. Minnesota applied for designation to provide laboratory services only.

GIPSA asked for comments on Jamestown, Mid-Iowa, Minnesota, Minnesota Grain, North Dakota, Northern Plains, Schaal, Sioux City, and State Grain.

Comments were due by October 18, 2005. GIPSA received a total of 51 comments by the closing date. GIPSA received 12 comments from grain firms supporting the designation of Jamestown; 3 comments from grain firms supporting the designation of Mid-Iowa; 8 comments from grain firms supporting the designation of North Dakota; 2 comments from grain firms and 1 comment from a city official supporting the designation of Schaal; 4 comments from grain firms supporting the designation of Sioux City; and 3 comments from grain firms and 11 comments from other businesses and individuals supporting the designation of State Grain. We received 1 comment from a grain firm supporting the designation of both Minnesota Grain and North Dakota. In addition, GIPSA received 6 other general comments concerning the designation process and procedures, 2 from grain trade organizations, 1 from an organization of official agencies, 1 from Minnesota employees, and 2 from grain firms. One of the grain trade organizations did support designation of North Dakota, Sioux City, and State Grain.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Jamestown, Mid-Iowa, North Dakota, Northern Plains, Schaal, Sioux City, and State Grain are better able to provide official services in the geographic areas for which they are being selected.

Effective January 1, 2006, and concurrent with their present designations, the following official agencies are designated, pursuant to Section (7)(f)(2) of the Act, for the specified geographic areas cited below.

Jamestown is designated in the following Minnesota Counties: Traverse, Grant, Douglas, Todd, Morrison, Mille Lacs, Kanabec, Pine, Big Stone, Stevens, Pope, Stearns, Benton, Isanti, Chisago, Swift, Kandiyohi, Meeker, Wright, Sherburne, Anoka, Lac Qui Parle, and Chippewa. Jamestown's designation is being amended accordingly to add this geographic area, and to add weighing services to their current designation.

Mid-Iowa is designated in the following Minnesota Counties: Wabasha, Olmstead, Winona, and Houston Counties, as well as Fillmore. Mid-Iowa's designation is being amended accordingly to add this geographic area. Mid-Iowa is already designated to provide weighing services.

North Dakota is designated in the following Minnesota Counties: Koochiching, St. Louis, Lake, Cook, Itasca, Norman, Mahnomen, Hubbard, Cass, Clay, Becker, Wadena, Crow Wing, Aitkin, Carlton, Wilkin, and Otter Tail, excluding those export port locations served by GIPSA. North Dakota's designation is being amended accordingly to add this geographic area, and to add weighing services to their current designation.

Northern Plains is designated in the following Minnesota Counties: Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Pennington, Red Lake, and Clearwater. Northern Plains' designation is being amended accordingly to add this geographic area. There is no demonstrated need for weighing services in the area for which Northern Plains is being designated.

Schaal is designated in the following Minnesota Counties: Faribault, Freeborn, and Mower. Schaal's designation is being amended accordingly to add this geographic area. Schaal is already designated to provide weighing services.

Sioux City is designated in the following Minnesota Counties: Yellow Medicine, Renville, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson, and Martin. Sioux City?s designation is being amended accordingly to add this geographic area. Sioux City is already designated to provide weighing services.

Effective January 1, 2006, and terminating June 30, 2007, State Grain is designated to provide official grain inspection and weighing services, pursuant to Section (7)(f)(2) of the Act, in the following Counties in the State of Minnesota: Hennepin, Ramsey, Washington, Carver, Scott, Dakota, Brown, Nicollet, Le Sueur, Rice, Goodhue, Watonwan, Blue Earth, Waseca, Steele, Dodge, McLeod, and Sibley.

Interested persons may obtain official services by calling the agencies at the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Jamestown	Jamestown, ND—701–252–1290	4/1/2003–3/31/2006
Mid-Iowa	Cedar Rapids, IA—319–363–0239	7/1/2005–6/30/2008
	Additional service location: Clayton, IA	
North Dakota	Fargo, ND—701–293–7420	4/1/2005–3/31/2008
	Additional service locations: Cahokia, Teutopolis, and Wayne City, IL, Ayr, Enderlin, Hillsboro, and Taylor, ND.	
Northern Plains	Grand Forks, ND—701–772–2414	4/1/2005–3/31/2008
	Additional service location: Devils Lake, ND	
Schaal	Belmond, IA—641–444–3122	
Sioux City	Sioux City, IA—712–255–8073	4/1/2003–3/31/2006
	Additional service location: Fort Dodge, IA	
State Grain	Mankato, MN—507–387–1514	1/1/2006–6/30/2007

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

John R. Sharpe,

Director, Compliance Division, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–23122 Filed 11–22–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on December 8, 2005, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

The Committee will meet only in closed session to discuss matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 18, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portions of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies and the portions of this meeting disclosing privileged and confidential business information shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The entire meeting will include discussion concerning these matters.

For more information, contact Yvette Springer on 202–482–4814.

Dated: November 18, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–23255 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee, Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 6, 2005, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Regulations update.
4. Update on proposed rule on deemed export related regulatory requirements (RIN 0694–AD29).
5. Update on Wassenaar Statement of Understanding on Military End-uses.
6. Update on Missile Technology controls.
7. Country policy updates: Libya, Iraq.
8. Update on Country Group revision project.
9. Update on Automated Export System.
10. Simplified Network Application Process (SNAP) update.
11. Working group reports.

Closed Session

12. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 18, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 sections (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–4814.

Dated: November 18, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–23254 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes & Tubes from Thailand: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Myrna Lobo, Office 6, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand, covering the period March 1, 2004, through February 28, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act'') requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the need for further analysis of complex accounting issues relating to cost of production, the Department finds that it is not practicable to complete the preliminary results in this administrative review of circular welded carbon steel pipes and tubes from Thailand by December 1, 2005. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than March 31, 2006, in accordance with section 751(a)(3)(A) of the Act. The deadline for the final results of the administrative review continue to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: November 17, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6468 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons at (202) 482–0656 or (202) 482–0498, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2005, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (70 FR 30694). The period of review is April 1, 2004, through March 31, 2005, and the preliminary results are currently due no later than December 31, 2005. The review covers 34 producers/exporters of the subject merchandise to the United States.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves a number of complicated issues for certain of the respondents, including the reporting of downstream sales for affiliated resellers. Analysis of these issues requires additional time. Therefore, we have fully extended the deadline for completing the preliminary results until May 1, 2006, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: November 17, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6469 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

EFFECTIVE DATE: November 23, 2005.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between July 1, 2005, and September 30, 2005. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of September 30, 2005. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Alice Gibbons, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0498.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the

Federal Register a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent ''Notice of Scope Rulings'' was published on September 20, 2005. *See* 70 FR 55110. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between July 1, 2005, and September 30, 2005, inclusive. It also lists any scope or anticircumvention inquiries pending as of September 30, 2005, as well as scope rulings inadvertently omitted from prior published lists. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between July 1, 2005 and September 30, 2005:

Malaysia

A–570–813: Polyethylene Retail Carrier Bags from Malaysia

Requestor: PAK 2000; bags with molded handles and a snapping closure are within the scope of the antidumping duty order; September 29, 2005.

People's Republic of China

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; iron cast bases, iron cast upper bodies, and iron cast lids are within the scope of the antidumping duty order, and meter box frames, covers, and extension rings are excluded from the scope of the antidumping duty order; September 7, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kohl's Department Stores, Inc.; candles contained in a ceramic basket, which are in the shape of Easter eggs and painted with multiple Easter colors, are within the scope of the antidumping duty order; July 22, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Avon Products Inc.; its ''Chalet'' and ''Cottage'' shaped candles are not included within the scope of the antidumping duty order; September 27, 2005.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Spencer Gifts LLC; ''butterfly chairs'' are excluded from the scope of the antidumping duty order; July 13, 2005.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Korhani of America; the ''wood–seated folding chair'' is within the scope of the antidumping duty order; July 13, 2005.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: PAK 2000; bags with molded handles and a snapping closure are within the scope of the antidumping duty order; September 29, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Sunrise Medical Inc.; wooden bed panels and case goods are within the scope of the antidumping duty order, and certain overbed tables are excluded from the scope of the antidumping duty order; September 29, 2005.

Thailand

A–570–821: Polyethylene Retail Carrier Bags from Thailand

Requestor: PAK 2000; bags with molded handles and a snapping closure are within the scope of the antidumping duty order; September 29, 2005.

Anti-circumvention Determinations Completed Between July 1, 2005 and September 30, 2005:

None.

Anti-circumvention Inquiries Terminated Between July 1, 2005 and September 30, 2005:

None.

Scope Inquiries Terminated Between July 1, 2005 and September 30, 2005:

People's Republic of China

A–570–864: Granular Pure Magnesium from the People's Republic of China

Requestor: ESM Group Inc.; whether atomized magnesium produced in the People's Republic of China (PRC) from pure magnesium manufactured in the United States is within the scope of the antidumping duty order; terminated September 22, 2005.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Seaman Paper Company of Massachusetts, Inc. (MA); American Crepe Corporation (PA); Eagle Tissue LLC (CT); Flower City Tissue Mills Co. (NY); Garlock Printing & Converting, Inc. (MA); Paper Service Ltd. (NH); Putney Paper Co., Ltd. (VT); and the Paper, Allied–Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC; whether certain tissue paper products are within the scope of the antidumping duty order when imported as part of a kit or set of goods that includes other non–subject items; terminated July 22, 2005.

Scope Inquiries Pending as of September 30, 2005:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Eighteen Karat International Product Sourcing, Inc.; whether its 12 ''orchid'' candles are within the scope of the antidumping duty order; requested September 12, 2005.

A–570–803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Avalanche Industries LLC; whether ''Smart Splitter'' is within the scope of the antidumping duty order; requested March 10, 2005; initiated May 12, 2005.

A–570–832: Pure Magnesium from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country and exported to the United States using pure magnesium ingots originally produced in the PRC is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Mac Industries (Shanghai) Co., Ltd., Jiaxing Yinmao International Treading Co., Ltd., and Fujian Zenithen Consumer Products Co., Ltd.; whether their ''moon chair'' is within the scope of the antidumping duty order; requested August 18, 2005.

A–570–878: Saccharin from the People's Republic of China

Requestor: PMC Specialities Group, Inc.; whether certain saccharin products originating in the PRC and further–processed in Israel are within the scope of the antidumping duty order; requested August 12, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Dorel Asia; whether certain infant furniture (i.e., infant (baby) changing tables, toy boxes or chests, infant (baby) armories, and toddler beds) is within the scope of the

antidumping duty order; requested February 15, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Leggett & Platt; whether day beds are within the scope of the antidumping duty order; requested July 21, 2005.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: LumiSource, Inc.; whether its cell phone stash chair, whale stash chair, dolphin stash chair, and stash cube are within the scope of the antidumping duty order; requested October 21, 2004.

A–570–896: Magnesium Metal from the People's Republic of China

Requestor: U.S. Magnesium LLC; whether pure and alloy magnesium processed in Canada, France, or any third country and exported to the United States using pure magnesium ingots originally produced in the PRC is within the scope of the antidumping duty order; requested July 19, 2005; initiated September 2, 2005.

Russian Federation

A–821–802: Antidumping Suspension Agreement on Uranium

Requestor: USEC, Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the order; requested August 6, 1999.

A–821–819: Magnesium Metal From the Russian Federation

Requestor: US Magnesium LLC; whether pure and alloy magnesium processed in Canada or France or any third country from pure magnesium originally produced in the Russian Federation and exported to the United States is within the scope of the antidumping duty order on magnesium metal from Russia; requested July 19, 2005; initiated September 2, 2005.

Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Piazza Seafood World LLC; whether certain basa and tra fillets from Cambodia which are a product of Vietnam are excluded from the antidumping duty order; requested May 12, 2004; initiated October 22, 2004.

Anti-circumvention Inquiries Pending as of September 30, 2005:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered later–developed merchandise which is now circumventing the antidumping duty order; requested October 8, 2004; initiated February 25, 2005.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable–based wax candles from the PRC can be considered a minor alteration to the subject merchandise for purposes of circumventing the antidumping duty order; requested October 12, 2004; initiated February 25, 2005.

Vietnam

A–552–801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

Requestor: Catfish Farmers of America and certain individual U.S. catfish processors; whether imports of frozen fish fillets from Cambodia made from live fish sourced from Vietnam, and falling within the scope of the order, are circumventing the antidumping duty order; requested August 20, 2004; initiated October 22, 2004.

Scope Rulings Inadvertently Omitted from Prior Published Lists:

None.

Interested parties are invited to comment on the completeness of this list of pending scope and anti–circumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o) of the Department's regulations.

Dated: November 17, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6467 Filed 11–23–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, December 13, 2005, from 8:30 a.m. to 3:50 p.m. and Wednesday, December 14, 2005 from 10:30 a.m. to 12:30 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST's activities, a presentation on NIST's Strategic Planning and Priority-Setting Process, an Overview of the Strategic Planning Process in selected laboratories, a report on a Vision for the NIST U.S. Measurement System Project, a VCAT Panel on Best Practices for Strategic Planning, and three laboratory tours. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site.

DATES: The meeting will convene on December 13 at 8:30 a.m. and will adjourn on December 14, 2005 at 12:30 p.m.

ADDRESSES: The meeting will be held in the Radio Building, Room 1107, at NIST, Boulder, Colorado. All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, December 8, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

FOR FURTHER INFORMATION CONTACT: Carolyn Peters, Visiting Committee on

Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

Dated: November 17, 2005.

William Jeffrey,

Director.

[FR Doc. 05–23143 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111605D]

Marine Mammals; File No. 918–1820

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Squalus, Inc., P.O. Box 301, Myakka City, FL 34251 has applied in due form for a permit to import four South American (Patagonian) sea lions (*Otaria flavescens*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before December 23, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; *http://www.nmfs.noaa.gov/pr/permits/review.htm*; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 918–1820.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Jennifer Skidmore, (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import one male and three female, captive-born, juvenile Patagonian sea lions from Park Atlantis, Mexico City, Mexico to the Squalus facilities in Myakka City, Florida. The applicant requests this import for the purpose of public display. The receiving facility is aware of the public display criteria for holding marine mammals for public display and their obligation to demonstrate said criteria prior to acquiring these animals. Squalus' programs are open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee. Squalus offers an educational program based on professionally accepted standards and holds an Exhibitor's License, number 58–C–0648, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 16, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–23204 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111605H]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of Public Meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 14, 2005. The Council will convene on Wednesday, December 14, 2005, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m.

ADDRESSES: The meetings will be held at Holiday Inn Windward Passage Hotel, Veterans Drive, Charlotte Amalie, St. Thomas, USVI 00802.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 120th regular public meeting to discuss the items contained in the following agenda:

December 14, 2005

9 a.m. to 5 p.m.

Call to Order
Adoption of Agenda
Consideration of 119th Council Meeting Verbatim Transcription
Executive Director's Report
Socio-Economic Considerations of Limited Entry - Juan Agar
Discussion of USVI Negotiation Panel
Next Council Meeting

5:15 p.m. to 6 p.m.

Administrative Committee Meeting -Advisory Panel/Scientific and Statistical Committee/Habitat Advisory Panel (AP/SSC/HAP) Membership

-Budget 2004, 2005
-Other Business

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues. Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 17, 2005.

Emily Menashes,

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

[FR Doc. E5–6446 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 601–4722, extension 110.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on October 5, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 16, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

DSCA 01

SYSTEM NAME:

International Affairs Personnel Initiatives Database.

SYSTEM LOCATION:

Defense Institute of Security Assistance Management, Research Directorate, 2475 K Street, Wright-Patterson AFB, OH 45433–7641.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilians and foreign service nationals employed by the Department of Defense (DoD), who wish to become certified by the DoD International Affairs Certification Program, a voluntary program sponsored by the Defense Security Cooperation Agency, Army, Navy, and Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name; Social Security Number (SSN); e-mail address; organization; job series/title; certification criteria data, such as, education and experience (Federal service start date and start date in international affairs); and submission verification data such as supervisory contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301, Departmental Regulation; 10 U.S.C. Chapter 2, Secretary of Defense; E.O. 9397 (SSN).

PURPOSE(S):

To establish an International Affairs Personnel Initiatives Database (IAPID), a single central facility within the Department of Defense (DoD), to maintain and verify information provided by individuals voluntarily seeking International Affairs certification based on their experience and training. The Certification Database is designed to standardized certification and career development guidelines, which provide DoD the opportunity to enhance and develop personnel with the knowledge, skills, and abilities required to support International Affairs in the 21st century, from entry-level personnel through senior leadership.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices of storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Records are maintained on electronic storage media.

RETRIEVABILITY:

Records are retrieved by individual's name Organization, and level of certification.

SAFEGUARDS:

Records are maintained in controlled areas accessible only to authorized personnel. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is an active participant. Records will be destroyed five years after the individual last actively participated.

SYSTEM MANAGERS AND ADDRESSES:

U.S. Army Personnel: DASA DE&C, 1777 North Kent Street, Rosslyn, VA 22209–2185; U.S. Navy/U.S. Marine Corps Personnel: Navy International Programs Office, 3801 Nebraska Ave., NW., Washington, DC, 20393–5445; U.S.

Air Force Personnel: SAF/IAPX, 1550 Wilson Blvd., Suite 900, Arlington, VA 22209–1080; Other Defense Personnel: Defense Institute of Security Assistance Management, Project Manager, Building 52, 2475 K Street, Wright-Patterson AFB, OH 45433–7641.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system manager.

Requests should contain the full name, Social Security Number (SSN), organization, and job series/title.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the appropriate System managers.

Requests should contain the full name, Social Security Number (SSN), organization, and job series/title.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and immediate supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23129 Filed 11–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice To Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, in order to eliminate an ambiguity that now exists regarding the use of such records.

DATES: This proposed action will be effective without further notice on December 23, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588–7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

November 17, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA F

SYSTEM NAME:

Courts Martial and Article 15 Records (December 10, 2004, 69 FR 71804).

CHANGES:

* * * * *

PURPOSE(S):

Add a new paragraph between the second and third paragraphs to real ''Article 15 records are used by commanders in the administration of Article 15 proceedings.''

* * * * *

F051 AF JA F

SYSTEM NAME:

Courts-Martial and Article 15 Records.

SYSTEM LOCATION:

Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420;

Headquarters Air force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100;

Washington National Records Center, Washington, DC 20409–0002; and

Air Force major commands, major subordinate commands headquarters, and at all levels down to and including Air Force installations. Official mailing addressees are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons subject to the Uniform Code of Military Justice (10 U.S.C. 802) who are tried by courts-martial or upon whom Article 15 punishment is imposed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of trial by courts-martial and records of Article 15 punishment and documents received or prepared in anticipation of judicial and non-judicial proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 815(g), Commanding officer's non-judicial punishment; 854, Record of Trial; 865, Disposition of records after review by the convening authority and E.O. 9397.

PURPOSE(S):

Records of trial by courts-martial are used for review by the appellate and other authorities.

Portions of the record in every case are used in evaluating the individual's overall performance and inclusion in the military master personnel record; if conviction results, a record thereof can be introduced at a subsequent courts-martial trial involving the same individual; also used as source documents for collection of statistical information.

Article 15 records are used by commanders in the administration of Article 15 proceedings.

Article 15 records are used for review of legal sufficiency and action on appeals or applications for correction of military records filed before appropriate Air Force authorities; used to formulate responses to inquiries concerning individual cases made by the Congress, the President, the Department of Defense, the individual involved or other persons or agencies with a legitimate interest in the Article 15 action; used by Air Force personnel authorities in evaluating the individual's overall performance and inclusion in the individual's military master personnel record; may be used for introduction at a subsequent courts-martial trial involving the same individual; used as source documents for collection of statistical information by The Judge Advocate General.

Documents received or prepared in anticipation of judicial and non-judicial Uniform Code of Military Justice proceedings are used by prosecuting attorneys for the government to analyze evidence; to prepare for examination of

witnesses; to prepare for argument before courts, magistrates, and investigating officers, and to advise commanders. Documents may be required after trial when appellate or reviewing authorities made post-trials inquiries or order new trials.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records from this system may be disclosed to the Department of Veterans Affairs, the Department of Justice, the Department of State, and federal courts for determination of rights and entitlements of individuals concerned or the government.

The records may also be disclosed to a governmental board or agency or health care professional society or organization if such record or document is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed non-credentialed health care personnel who are or were members of the United States Air Force, and to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To victims and witnesses of a crime for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program and the Victims' Rights and Restitution Act of 1990 regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

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

STORAGE:

Maintained in file folders, and in computers and computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number, Military Service Number, or by other searchable data fields.

SAFEGUARDS:

Records are accessed by custodian of the record system and person(s) who are properly screened and cleared for need-to-know. Records are stored in vaults and locked rooms or cabinets. Records are protected by guards, and controlled by personnel screening and by visitor registers. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Courts-martial records are retained in office files for 2 years following date of final action and then retired as permanent. General and special courts-martial records are retired to the Washington National Records Center, Washington, DC 20409–0002.

Summary courts-martial and Article 15 records are retained in office files for 1 year or until no longer needed, whichever is sooner, and then retired as permanent.

Summary courts-martial and Article 15 records are forwarded to the Air Force Personnel Center for filing in the individual's permanent master personnel record.

Documents received or prepared in anticipation of judicial and non-judicial Uniform Code of Military Justice proceedings are maintained in office files until convictions are final or until no longer needed then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420;

Chief, Military Personnel Records Division, Directorate of Personnel Data Systems, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; and

The Staff Judge Advocate at all levels of command and at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate System manager above.

Individual should provide full name, Social Security Number, service number if different than Social Security Number, unit of assignment, date of trial and type of court, if known, or date punishment imposed in the case of Article 15 action.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the appropriate System manager above.

Individual should provide full name, Social Security Number, service number if different than Social Security Number, unit of assignment, date of trial and type of court, if known, or date punishment imposed in the case of Article 15 action. Requester may visit the office of the system manager. Requester must present valid identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from almost any source can be included if it is relevant and material to the Article 15 or courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2).

However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e)

and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 05–23130 Filed 11–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 23, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Eugenia Harms at (703) 696–6280.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 17, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC I

SYSTEM NAME:

Cadet Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete ''20 North Pine Street'' and replace with: ''551 East Maxwell Boulevard.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete second paragraph and replace with: ''Field training administration records consist of student performance reports.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete paragraph and replace with: ''10 U.S.C. Chapter 33, Original Appointments of Regular Officers in Grades Above Warrant Officers; 10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; E.O. 9397 (SSN); Air Force Instruction 36–2011, Air Force Reserve Officers Training Corps (AFROTC); and Air Force Officer Accession and Training School Instruction 36–2011, Administration of Senior Air Force Cadets.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete ''20 North Pine Street'' and replace with: ''551 East Maxwell Boulevard.''

NOTIFICATION PROCEDURE:

Delete ''20 North Pine Street'' and replace with: ''551 East Maxwell Boulevard.''

RECORD ACCESS PROCEDURES:

Delete ''20 North Pine Street'' and replace with: ''551 East Maxwell Boulevard.''

CONTESTING RECORD PROCEDURES:

Delete ''37–132'' and replace with: ''33–332.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete first paragraph and replace with: ''Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a confidential source.''

* * * * *

F036 AETC I

SYSTEM NAME:

Cadet Records.

SYSTEM LOCATION:

Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110, and portions pertaining to each Reserve Officer Training Corps detachment located at respective detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Officer Training Corps (AFROTC) cadets applying for, or enrolled or previously enrolled within the past three years, in the professional officers course or the general military course, if the latter participation was in a scholarship status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for enrollment in the Air Force Reserve Officers' Training Corps (AFROTC) courses, applications for the AFROTC scholarship program, substantiation records of qualification for the courses or programs, acceptances of applications, awards of scholarships, records attesting to medical, academic, moral and civic qualifications, records recording progress in flying instruction, Euro-NATO Joint Jet Pilot Training (ENJJPT) application data, academic curriculum and leadership training, counseling summaries, records of disenrollment from other officer candidate training; records of separation or discharge from officer candidate training; records of separation or discharge of prior service members; financial record data, certification of degree requirements; Regular appointment nomination data, records tendering and accepting commissions, records verifying national agency checks or background investigation, records required or proffered during investigations for disenrollment, legal opinions, letters of recommendations, corroboration by civil authorities, awards, citations; and allied papers.

Field training administration records consist of student performance reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 33, Original Appointments of Regular Officers in Grades Above Warrant Officers; 10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; E.O. 9397 (SSN); Air Force Instruction 36–2011, Air Force Reserve Officers Training Corps (AFROTC); and Air Force Officer Accession and Training School Instruction 36–2011, Administration of Senior Air Force Cadets.

PURPOSE(S):

Used for recruiting and qualifying a candidate for acceptance as an AFROTC cadet, continuing the cadet in the program and awarding an Air Force commission.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

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

STORAGE:

Maintained in file folders, note books/ binders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number and detachment number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records at unit of assignment are destroyed one year after acceptance of commission or one year after disenrollment. Records at HQ AFROTC for disenrolled cadets are destroyed after three years. Computer records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Senior Program, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110, and Commander of appropriate AFROTC detachment.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records notices.

Request for information involving an investigation for disenrollment should be addressed to Commander, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110. Requests should include full name and SSN.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the AFROTC Detachment Commander at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request for information involving an investigation for disenrollment should be addressed to Commander, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110. Requests should include full name and SSN.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources of records in the system are educational institutions, secondary and higher learning; government agencies; civilian authorities; financial institutions; previous employer; individual recommendations, interviewing officers; and civilian medical authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(5), as applicable, but only to the extent that disclosure would reveal the identity of a confidential source.

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a confidential source.

[FR Doc. 05–23131 Filed 11–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare Environmental Impact Statements for Realignment Actions Resulting From the 2005 Base Closure and Realignment Commission's Recommendations

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Defense Base Closure and Realignment (BRAC) Commissions were established by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990 (BRAC Law), to recommend military installations for realignment and closure. The 2005 Commission's recommendations were included in a report which was presented to the President on September 8, 2005. The President approved and forwarded this report to Congress on September 16, 2005. Since a joint resolution to disapprove these recommendations did not occur within the statutorily provided time period, these recommendations have become law and must be implemented in accordance with the requirements of the BRAC Law.

The BRAC Law exempts the decision-making process of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The Law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal, and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct and indirect environmental and socioeconomic effects of these actions and the cumulative impacts of other reasonably foreseeable actions affecting the installations.

The Department of the Army intends to prepare individual Environmental Impact Statements (EIS) pursuant to section 102(2)(C) of NEPA, regulations of the Council on Environmental Quality (40 CFR 1500–1508), and the Army NEPA regulation (32 CFR 651 *et seq.*) for each of the actions listed below.

Opportunities for public participation will be announced in the respective local newspapers. The public will be

invited to participate in scoping activities for each EIS and comments from the public will be considered before any action is taken to implement these actions.

Environmental Impact Statements are planned for each of the following realignment actions:

a. Fort Meade, Maryland. The BRAC realignment action will co-locate and consolidate Department of Defense information and information technology missions at Fort Meade.

(1) EIS alternatives could include evaluating siting locations for structures and related projects within Fort Meade that involve new building construction only or new building construction combined with renovation of existing facilities. The alternatives would evaluate areas to provide for construction of, but not be limited to, six to eight 4-story administration buidlings, a full day care child development center, a standard-design Whole Barracks Complex, and a physical fitness center.

(2) The proposed BRAC action may have significant environmental impacts due to the infrastructure and facilities construction that will be required to accommodate an estimated increase of over 5,500 personnel. Significant issues to be analyzed in the EIS may include potential impacts to air quality from increased vehicle emissions, installation and regional traffic increases, land use changes, natural resources, water use, solid waste, cultural resources, and cumulative impacts from increased burdens to the facility based on projected growth.

b. Aberdeen Proving Ground (APG), Maryland. APG will be receiving numerous Army, Navy and Air Force activities to transform it into a full spectrum research, development, acquisition center for Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance (C4ISR) Defense Chemical and Biological Systems. The Army Test and Evaluation Command Headquarters and Civilian Personnel Offices will also be consolidated at APG.

(1) Alternatives to be examined in the EIS could include alternative distribution of new activities between APG and the Edgewood Area for military field training exercises; alternative siting schemes for placement of buildings and related infrastructure to accommodate an increase of about 15,000 Army personnel within the APG and Edgewood Area. These may include siting schemes for new building construction only, or new building construction combined with renovation of existing facilities.

(2) The proposed BRAC action may have significant environmental impacts due to the large amount of infrastructure and facilities construction that will be required to accommodate an increase of personnel and military training operations. Significant issues to be analyzed in the EIS will include on-post and local air quality conditions, on-post and regional traffic conditions, housing, socioeconomics, noise due to increased vehicle use, threatened and endangered species to include bald eagle habitat, historic buildings and archeological resources, wetlands, biological resources, land use, and community facilities and services.

c. Fort Belvoir, Virginia. Fort Belvoir will be receiving numerous Department of Defense activities from leased space within the National Capital Region (NCR); National Geospatial Intelligence Agency units from various NCR leased locations and Bethesda, Maryland; primary and secondary medical care functions from Walter Reed Medical Center to a new, expanded DeWitt Army Hospital; and inventory control point functions for consumable items to the Defense Logistics Agency from the Naval Support Activist, Mechanisburg and Wright-Patterson Air Force Base, Ohio.

(1) EIS alternatives may consist of moving all activities to the Fort Belvoir Main Post, moving all activities to the Engineer Proving Ground (EPG), or moving a portion of the activities to the Main Point and a portion to the EPG. Other alternatives could include alternative land locations for specific projects within Fort Belvoir, within the EPG, or a combination of both; new construction only; new construction combined with renovation of existing facilities; alternative facility siting schemes, or other modifications of specific projects.

(2) The proposed BRAC action may have significant environmental impacts due to the large amount of infrastructure and facilities construction that will be required to accommodate an estimated increase of over 18,000 personnel. Significant issues to be analyzed in the EIS will include potential impacts to air quality condition in the Northern Virginia region, transportation systems in the Northern Virginia region, traffic conditions with Fort Belvoir, threatened and endangered species, historic buildings and archeological resources, wetlands, biological resources, land use, and community facilities and services.

d. Fort Lee, Virginia. Fort Lee will receive the Transportation Center and School from Fort Eustis, Virginia, and the Ordnance Center and School from Aberdeen Proving Ground, Maryland. These functions will be consolidated with the Quartermaster Center and School, the Army Logistics Management College, and Combined Arms Support Command to establish a Combat Service Support Center at Fort Lee.

(1) Alternatives to be examined in the EIS may include the usage of only Fort Lee for field training exercises, the usage of other military installations (Fort A.P. Hill) for field training exercises, or a combination of both; alternative land locations for specific projects with Fort Lee and Fort A.P. Hill; new construction only; new construction combined with renovation of existing facilities; alternative facility siting schemes, or other modifications of specific projects.

(2) The proposed BRAC action may have significant environmental impacts due to the large amount of infrastructure and facilities construction that will be required to accommodate an estimated increase of over 7,000 personnel. Significant issues to be analyzed in the EIS will include air quality conditions, traffic conditions, noise due to increased training activities, threatened and endangered species, historic buildings and archeological resources, wetlands, biological resources, land use, and community facilities and services.

e. Fort Benning, Georgia. Fort Benning will receive the Armor Center and School from Fort Knox, Kentucky; 81st Regional Readiness Center from Fort Gillem, Georgia; and the U.S. Army Reserve Center from Columbus, Georgia.

(1) Alternatives to be examined by the EIS may consist of alternative siting locations with Fort Benning for facility construction projects, new construction only, renovation and use of existing facilities, or a combination of both new construction and use of existing facilities, and usage of alternatives land locations within Fort Benning for training activities.

(2) As a result of new construction and training activities associated with moving nearly 10,000 personnel to Fort Benning, the BRAC action has the potential to cause significant environmental impacts to threatened and endangered species such as the red-cockaded woodpecker, archeological sites, wetlands, soil erosion, and increased noise impacts to the surrounding public.

f. Fort Sam Houston, Texas. Navy and Air Force medical training activities from various locations within the U.S. and the 59th Medical Wing from Lackland Air Force Base, Texas, will move to Fort Sam Houston to form a Department of Defense medical training

center. The Army Installation Management Agency (IMA) Headquarters from Virginia, the Northwest IMA Regional office from Illinois, and the Army Environmental Center from Maryland will also move to Fort Sam Houston.

(1) Alternatives to be examined in the EIS could consist of alternative locations within Fort Sam Houston for siting facility construction, new construction only, renovation and use of existing facilities (to include historic buildings), or a combination of both new construction and use of existing facilities, and usage of alternative locations within Camp Bullis, a sub-post of Fort Sam Houston, for training activities.

(2) As a result of moving approximately 9,000 new personnel to Fort Sam Houston and associated new construction, renovation and training activities, implementing the proposed BRAC action could have potential significant impacts to traffic on and off post, air quality and historic properties, to include contributing elements of the Fort Sam Houston National Historic Landmark District.

g. Fort Carson, Colorado. Fort Carson will receive a Heavy Brigade Combat team and a Unit of Employment Headquarters from Fort Hood, Texas, and the inpatient care services from the U.S. Air Force Academy, Colorado. Another Infantry Brigade Combat Team from overseas could also be transferred to Fort Carson as a result of the BRAC recommendation.

(1) Alternatives that may be considered in the Fort Carson EIS could include phasing movement of units to the fort, alternative siting locations within the post of placement of new facilities, construction of only new facilities, utilization and renovation of existing facilities, a combination of new construction and utilization of existing facilities, and utilization of alternative locations within Fort Carson for training activities.

(2) Fort Carson will gain approximately 10,000 Army personnel as a result of the BRAC action. Construction of new facilities, renovation of existing infrastructure and additional training activities could have significant environmental impacts on Fort Carson and its environs. Impacts could concur to local air and water quality, archaeological resources, noise and traffic.

h. Pinion Canyon Maneuver Site, Colorado. Pinion Canyon Maneuver Site (PCMS) is a subpost of Fort Carson and a primary training area for units stationed at Fort Carson and other Army posts. The new combat units stationed at Fort Carson will increase the training tempo at the PCMS.

(1) The EIS to be prepared for the PCMS will examine a number of implementation alternatives that could include alternative placement of new construction projects, alternative locations within the PCMS for training activities, and alternative timing for units to conduct training activities at the PCMS.

(2) The Fort Carson BRAC action has the potential to significantly impact natural resources at the PCMS since the approximately 10,000 new personnel to be stationed there will now be training at the PCMS on a regular basis. New construction and increased training activities at the PCMS could have an impact on archaeological resources, natural resources, air and water quality, and soil erosion.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office of the affected installations or the appropriate higher headquarters as indicated: (1) Fort Meade, MD—(301) 677–1301; (2) Aberdeen Proving Ground, MD—(410) 278–1147; (3) Fort Belvoir, VA—(703) 805–2583; (4) Fort Lee, VA—(804) 734–6862; (5) Fort Benning, GA—(706) 545–3438; (6) Fort Sam Houston, TX—(210) 221–1099; (7) Fort Carson and Pinion Canyon Maneuver Site, CO—(910) 396–2122/5600.

Dated: November 18, 2005.

Addison D. Davis IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 05–23162 Filed 11–22–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 23, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 5, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 17, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME:

Information Technology Access and Control Records.

SYSTEM LOCATION:

Director, Information Operations, Headquarters Defense Logistics Agency, ATTN: J–6, 8725 John J. Kingman Road, Stop 6226, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled networks, computer systems, and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and grants of access to DLA computer networks, systems, or databases. The records contain the individual's name; social security number; citizenship; physical and electronic addresses; work telephone numbers; office symbol; contractor/employee status; computer logon addresses, passwords, and user identification codes; type of access/permissions required; verification of need to know; dates of mandatory

information assurance awareness training; and security clearance data. The system also captures details about programs, databases, functions, and sites accessed and/or used; dates and times of use; and information products created, received, or altered during use. The records may also contain details about access or functionality problems telephoned in for technical support along with resolution. For individuals who telecommute from home or a telework center, the records may contain the electronic address and telephone number at that location. For contractors, the system also contains the company name, contract number, and contract expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; E.O. 9397 (SSN); and E.O. 10450 (Security Requirements for Government Employees) as amended.

PURPOSE(S):

The system is maintained by DLA information Operations to control and track access to DLA-controlled networks, computer systems, and databases. The records may also be used by law enforcement officials to identify the occurrence of and assist in the prevention of computer misuse and/or crime. Statistical data, with all personal identifiers removed, may be used by management for system efficiency, workload calculation, or reporting purposes.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

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

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Data is retrieved by name, Social Security Number, or user identification code.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Electronic records are stored on computer systems employing software programs that monitor network traffic to identify unauthorized attempts to upload or change information. Access to computer systems is password and/or Public Key Infrastructure controlled. Electronic records are stored in encrypted form.

RETENTION AND DISPOSAL:

Records are deleted when no longer needed for administrative, legal, audit, or other operational purposes. Records relating to contractor access are destroyed 3 years after contract completion or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Operations, ATTN: J–6, 8725 John J. Kingman Road, Stop 6226, Fort Belvoir, VA 22060–6221, and the Information Operations offices of DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is supplied by record subjects, their supervisors, and the personnel security staff. Some data, such as user identification codes, is supplied by the Information Technology staff. Details about access times and functions used are provided by the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23127 Filed 11–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 23, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on October 5, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 17, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

S500.50

SYSTEM NAME:

Access and Badging Records (November 16, 2004, 69 FR 67112).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Facility Access Records.''

SYSTEM LOCATION:

In the first sentence, delete ''Office of Command Security'' and replace with: ''Public Safety.'' Delete the third sentence in its entirety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete ''installations, facilities, or computer systems'' and replace with: ''installations or facilities.'' Add a new second sentence to read: ''The system also contains data on children of civilian employees, military personnel, and contractors where the parents have requested that a child identification badge be issued.''

CATEGORIES OF RECORDS IN THE SYSTEM:

DELETE ENTRY AND REPLACE WITH:

''The system contains documents relating to requests for and issuance of facility entry badges and passes and motor vehicle registration. The records contain individual's name; Social Security Number; physical and electronic duty addresses; physical and electronic home addresses; duty and home telephone numbers; emergency-essential status; date and place of birth; citizenship; badge number, type of badge, and issue and expiration dates; facility identification and user codes and dates and times of building entry; current photograph; physical descriptors such as height, hair and eye color; blood type; fingerprint data; handicap data; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number, parking lot assignment; parking infractions; the fact of participation in mass transit programs; emergency contact data; and names of children registered at DLA child development centers.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the references to 18 U.S.C. 1029 and 18 U.S.C. 1030.

PURPOSE(S):

Delete entry and replace with: ''Information is maintained by DLA police and public safety personnel to control access into DLA-managed installations, buildings, facilities, and parking lots; to manage reserved, handicap and general parking; to verify security clearance status of individuals requiring entry into restricted access areas; to account for building occupants and to effect efficient evacuation during simulated and actual threat conditions; to relay threat situations and conditions to DoD law enforcement officials for investigative or evaluative purposes; and to notify emergency contact points of situations affecting a member of the workforce. Names of children registered at DLA child care centers are collected to notify the caregivers of emergencies affecting parents and to identify the children who may require special accommodations due to that emergency. In support of morale programs and when requested by parents, critical descriptive data and a current photograph of their child are captured for parental use should a child go missing.''

ROUTINE USES:

Add at the end of the entry: ''except for information collected on children.''

* * * * *

RETRIEVABILITY:

Delete ''bar code number'' and replace with ''facility or user code.''

SAFEGUARDS:

DELETE ENTRY AND REPLACE WITH:

''Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Central Processing Units are located in a physically controlled access area requiring either a badge or card swipe for entry. Workstations are password controlled with system-generated forced password change protocols. System log-on protocols and system software identify users and trace their actions. Employees are warned of the consequences of improperly accessing restricted databases and data misuse at each login, during staff meetings, and during separate information assurance and Privacy Act training sessions.''

RETENTION AND DISPOSAL:

Delete the third sentence regarding database access records.

SYSTEM MANAGER(S):

Delete entry and replace with: ''Staff Director, Public Safety, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

DELETE ENTRY AND REPLACE WITH:

''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

RECORD ACCESS PROCEDURES:

DELETE ENTRY AND REPLACE WITH:

''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

CONTESTING RECORD PROCEDURES:

Delete ''DES–B'' and replace with: ''DP.'' Delete ''Stop 6220'' and replace with ''Stop 2533.''

RECORD SOURCE CATEGORIES:

DELETE ENTRY AND REPLACE WITH:

''Data is supplied by the record subject and public safety personnel. Data for child identification badges is provided by the parent.''

* * * * *

S500.50

SYSTEM NAME:

Facility Access Records.

SYSTEM LOCATION:

Staff Director, Public Safety, Headquarters Defense Logistics Agency, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel,

contractor employees, and individuals requiring access to DLA-controlled installations or facilities. The system also contains data on children of civilian employees, military personnel, and contractors where the parents have requested that a child identification badge be issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents relating to requests for and issuance of facility entry badges and passes and motor vehicle registration. The records contain individual's name; Social Security Number; physical and electronic duty addresses; physical and electronic home addresses; duty and home telephone numbers; emergency-essential status; date and place of birth; citizenship; badge number, type of badge, and issue and expiration dates; facility identification and user codes and dates and times of building entry; current photograph; physical descriptors such as height, hair and eye color; blood type; fingerprint data; handicap data; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number, parking lot assignment; parking infractions; the fact of participation in mass transit programs; emergency contact data; and names of children registered at DLA child development centers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6122, Flexible schedules, agencies authorized to use; 5 U.S.C. 6125, Flexible schedules, time recording devices; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 23 U.S.C. 401 et seq., National highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10450 (Security Requirements for Government Employees).

PURPOSE(S):

Information is maintained by DLA police and public safety personnel to control access into DLA-managed installations, buildings, facilities, and parking lots; to manage reserved, handicap and general parking; to verify security clearance status of individuals requiring entry into restricted access areas; to account for building occupants and to effect efficient evacuation during simulated and actual threat conditions; to relay threat situations and conditions to DoD law enforcement officials for investigative or evaluate purposes; and to notify emergency contact points of situations affecting a member of the workforce. Names of children registered at DLA child care centers are collected to notify the caregivers of emergencies affecting parents and to identify the children who may require special accommodations due that emergency. In support of morale programs and when requested by parents, critical descriptive data and a current photograph of their child are captured for parental use should a child go missing.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system except for information collected on children.

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

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by name, Social Security Number, facility or user code, or decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Central Processing Units are located in a physically controlled access area requiring either a badge or card swipe for entry. Workstations are password controlled with system-generated forced password change protocols. System log-on protocols and system software identify users and trace their actions. Employees are warned of the consequences of improperly accessing restricted databases and data misuse at each login, during staff meetings, and during separate information assurance and Privacy Act training sessions.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation;

Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Public Safety, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by the record subject and public safety personnel. Data for child identification badges is provided by the parent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–23128 Filed 11–22–05; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team,

Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 23, 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: November 17, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part D Discretionary Grant Application—Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.
Burden Hours: 30,000.

Abstract: Under the Individuals with Disabilities Education Act discretionary grants are authorized to support technology, State personnel development, personnel preparation, parent training, and information and technical assistance activities. This grant application provides the forms and information necessary for applicants to submit an application for funding, and information for use by technical reviewers to determine the quality of application. Note the following changes: (1) Discretionary grants in the area of research have been excluded from this collection since special education research grants are now under the authority of IES. (2) State Personnel Development Grants (previously know as the State Improvement Grants under the 1820–0620 collection) have been added to this Part D umbrella collection. The 1820–0620 collection included a Q & A that is no longer relevant to the program and has not been used for several years. Other than the Q & A, there is no difference in the 1820–0620 collection and the 1820–0028 Part D umbrella collection. (3) Page B–8 of application package, paragraph 3, includes a detailed description of the abstract that applicants should include in the application.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the 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 2930. 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 Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–23164 Filed 11–22–05; 8:45 am]

BILLING CODE 4000–01–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 January 23, 2006.

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: November 18, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Consolidated State Application/ Consolidated State Annual Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 7,800.

Abstract: This information collection package describes the proposed criteria and procedures that govern the consolidated State application under which State educational agencies will apply to obtain funds for implementing Elementary and Secondary Education Act (ESEA) programs. The option of submitting a consolidated application for obtaining federal formula program grant funds is provided for in the reauthorized ESEA (No Child Left Behind—NCLB) Sections 9301–9306. This information collection package will guide the States in identifying the information and data required in the application.

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 2886. 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*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. 05–23165 Filed 11–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Request for Member Nominations; Hydrogen Technical and Fuel Cell Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of request for member nominations for the Hydrogen Technical and Fuel Cell Advisory Committee.

SUMMARY: The Hydrogen Technical and Fuel Cell Advisory Committee (HTAC or Committee) was established by section 807 of Title VIII, Hydrogen (''Spark M. Matsunaga Act of 2005''), of the 2005 Energy Policy Act (Pub. L. 109–58). In order to ensure a wide range of candidates for HTAC and a balanced committee, DOE is using this public announcement as an avenue to solicit nominations for this Committee.

DATES: Nominations should be submitted by January 23, 2006.

ADDRESSES: Nominations should be submitted in electronic format. Nominations should be sent via e-mail to *htac.nominees@ee.doe.gov*. Any requests for further information should also be sent via e-mail to *htac.nominees@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

The Committee will provide advice and recommendations to the Secretary of Energy (Secretary) on the program authorized by the Spark M. Matsunaga Hydrogen Act of 2005 (''the Act''). This Committee supersedes the Hydrogen Technical Advisory Panel established by the Spark M. Matsunaga Hydrogen Research, Development, Demonstration Program Act of 1990, Public Law 101–566, and reauthorized by the Hydrogen Future Act of 1996, Public Law 104–271.

The Committee's scope is to review and make recommendations to the Secretary on (1) The implementation of programs and activities under the Act (42 U.S.C. 16151 et seq.), (2) the safety, economical, and environmental consequences of technologies for the production, distribution, delivery, storage, or use of hydrogen energy and fuel cells and (3) the plan under section 804 of the Act. The Secretary shall consider, but need not adopt, any recommendations of HTAC.

DOE is hereby soliciting nominations for members of the Committee. The Committee is expected to be continuing in nature. The Secretary of Energy will appoint 12 to 25 Committee members. Members will be selected with a view toward achieving a balanced committee of representatives of domestic industry, academia, professional societies, government agencies, Federal laboratories, previous advisory panels, and financial, environmental and other appropriate organizations based on the needs of the Committee and DOE. Committee members will serve for a term of three years or less and may be reappointed. Appointments may be made in a manner that allows the terms of the members serving at any time to expire at spaced intervals, so as to ensure continuity in the functioning of the Committee. The Committee members will elect a chairperson from among their number. The Committee is expected to meet twice per year. Subcommittees to address specific agenda items are anticipated and may meet more frequently. Some Committee members may be appointed as special Government employees (SGEs) and will be subject to certain ethical restrictions as a result. Such members will also be required to submit certain information in connection with the appointment process.

Process and Deadline for Submitting Nominations

Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators should submit (via e-mail to *htac.nominees@ee.doe.gov*) a description of the nominee's qualifications, including matters that would enable the Department to make an informed decision, such as but not limited to the nominee's education and professional experience. Should more information be needed, DOE staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the internet.

A selection team will review the nomination packages. This team will be comprised of representatives from several DOE Offices, as well as at least one representative from the Department of Transportation. DOE is seeking a balance of appropriate stakeholder viewpoints to address the broad statutory mandate. (Note that the Committee will address implementation of the Hydrogen Program activities covered in the Act; the Committee will not address whether there should be a

Hydrogen Program.) The selection team will consider many criteria, including and not limited to: (a) Scientific or technical expertise, knowledge, and experience; (b) stakeholder representation as described in the Act; (c) availability and willingness to serve; and (d) skills working in committees, subcommittees and advisory panels. Structured interviews with some candidates may also occur.

The selection team will make recommendations regarding membership to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE). The Assistant Secretary for EERE will submit a list of recommended candidates to the Secretary for review and selection of Committee members.

Candidates selected by the Secretary of Energy to serve as SGEs will be required to fill out the Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Department of Energy and other forms incidental to Federal appointment. The confidential financial disclosure form allows government officials to determine whether there is a conflict between the special Government employee's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by statute and regulation. The form may be viewed from the following URL address: *http://www.hydrogen.energy.gov/advisory_panels.html*.

Issued in Washington, DC, on November 17, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05–23174 Filed 11–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL06–2–000]

Coordinated Processing of NGA Section 3 and 7 Proceedings; Order Delegating Authority

Issued November 17, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. Section 313 of the Energy Policy Act of 2005 (EPAct 2005) [1] amends section 15 of the Natural Gas Act (NGA) [2] to provide the Commission with additional authority to ensure the expeditious processing of natural gas project proposals. The Commission anticipates initiating a rulemaking proceeding in the near future to promulgate regulations in response to the EPAct 2005 amendments. In the interim, this order delegates to staff the authority to execute certain of the responsibilities vested with the Commission by EPAct 2005 section 313.

Introduction

2. EPAct 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal permits, authorizations, certificates, opinions, or other approvals required for an NGA section 3 or 7 proposal.[3] Section 313(b)(2) then declares that ''[e]ach Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission and comply with the deadlines established by the Commission.'' In addition, section 313(b)(1) designates the Commission ''as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969'' (NEPA).[4]

3. Pending issuance of regulations implementing these provisions of EPAct 2005, the Commission is delegating to the Director of the Office of Energy Projects (OEP) the authority to establish deadlines for all federal authorizations necessary for NGA section 3 and 7 proposals.

Background

4. Under NGA sections 3 and 7, the Commission grants or denies applications for proposed natural gas projects. The construction or operation of natural gas projects typically require additional permits, authorizations, certificates, opinions, and approvals issued by other federal agencies and by state agencies acting pursuant to delegated federal authority. Approval by the Commission to proceed with a proposal is contingent on favorable findings by these other agencies. EPAct 2005 section 313(c)(1) directs the Commission to establish a schedule for all federal authorizations required with respect to an application under NGA section 3 or 7.

5. In this role, EPAct 2005 section 313(c)(1)(A) compels the Commission to ''ensure expeditious completion'' of NGA section 3 and 7 proceedings, while section 313(c) (1)(B) directs the Commission to ''comply with applicable schedules established by Federal law.'' Thus, the Commission is responsible for (1) coordinating the actions of those federal and state agencies with authority to issue federal authorizations for an NGA section 3 or 7 proposal, and (2) setting deadlines for decisions on federal authorizations which will ''comply with applicable schedules established by Federal law.''

6. Commission authorizations under NGA sections 3 and 7 normally trigger NEPA. NEPA aspires to ''utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment.'' [5] EPAct 2005 section 313(b) clarifies the Commission's role in this collective, multi-agency effort, by designating the Commission as lead agency for the purpose of NEPA compliance for NGA section 3 and 7 proposals.

Commission Response to EPAct 2005 Amendments to NGA Section 15

7. As noted, the Commission anticipates initiating a rulemaking to implement the EPAct 2005 section 313 amendments to NGA section 15. However, the Commission believes that the processing of section 3 and 7 project proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EPAct 2005, may benefit by the immediate application of the additional authority conferred by EPAct 2005. Therefore, by this order, the Commission delegates the authority described below to the Director of OEP.

8. The Director of OEP is granted the authority to coordinate with federal and state agencies for the purpose of scheduling the completion of the analyses and decisionmaking necessary for federal authorization of section 3 and 7 proposals. Deadlines shall be no shorter than any applicable schedules established by federal law. For example, under section 401 of the Clean Water Act (CWA),[6] an applicant for federal authorization for any activity that may result in a discharge to navigable waters must obtain certification from the state in which the discharge originates that the discharge will comply with the CWA. The CWA provides the state up

[1] Pub. L. No. 109–58, 119 Stat. 594 (2005).

[2] 15 U.S.C. 717n (2000).

[3] NGA section 3 applies to projects designed to import or export natural gas; NGA section 7 applies to projects designed to transport or sell natural gas in interstate commerce.

[4] 42 U.S.C. 4321, *et seq.* (2000).

[5] 42 U.S.C. 4332(2)(A) (2000).

[6] 33 U.S.C. 1341 (2000).

to a year to act on a request for certification. Consequently, this time frame will be recognized in any schedule that the Director of OEP may set.

9. With respect to the revisions to NGA section 15, we expect to request public comments on rules of general applicability on how best to coordinate and schedule agencies' efforts in processing requests for federal authorizations. In the meantime, the Commission expects the Director of OEP to exercise the authority delegated herein on a flexible, case-by-case basis, to section 3 and 7 proposals filed prior to the effective date of a final rule, including proposals filed prior to the enactment of EPAct 2005. The Director of OEP need not intervene to establish deadlines for federal authorizations in every pending proceeding. For example, the Director of OEP may find it serves no purpose to establish deadlines in proceedings that are relatively close to completion. Agencies or parties to a proceeding that object to decisions of the Director of OEP under the authority delegated herein may request Commission review of the Director's actions.

The Commission orders:

The Commission delegates to the Director of OEP the authority provided by EPAct 2005 to establish a schedule for all federal authorizations necessary for NGA section 3 and 7 proposals.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 05–23139 Filed 11–22–05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–2–001]

Policy for Selective Discounting by Natural Gas Pipelines; Order Denying Rehearing

November 17, 2005.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. On May 31, 2005, the Commission issued an order (May 31 Order)[1] in this proceeding reaffirming the Commission's current policy on selective discounting. Timely requests for rehearing of that order were filed by the Illinois Municipal Gas Agency (IMGA) and, jointly by Northern Municipal Distributor Group and the Midwest Region Gas Agency (Northern Municipals). For the reasons discussed below, the requests for rehearing are denied.

Background

2. The prior orders in this proceeding set forth the background and development of the Commission's selective discounting policy.[2] Generally, as explained in those orders, the Commission's regulations permit pipelines to discount their rates, on a nondiscriminatory basis, in order to meet competition. For example, if a fuel-switchable shipper were able to obtain an alternate fuel at a cost less than the cost of gas including the transportation rate, the Commission's regulations permit the pipeline to discount its rates to compete with the alternate fuel, and thus obtain throughput that would otherwise be lost to the pipeline. As the Commission has explained, these discounts benefit all customers, including customers that do not receive the discounts, because the discounts allow the pipeline to maximize throughput and thus spread fixed costs across more units of service. Further, as the Commission has explained, selective discounting protects captive customers from rate increases that would otherwise occur if pipelines lost volumes through the inability to respond to competition. The Commission's regulations permitting selective discounting were upheld by the court in *Associated Gas Distributors* v. *FERC (AGD I).*[3]

3. The prior orders also explained the rationale behind the Commission's policy of allowing a discount adjustment and stated that the adoption of the discount adjustment resulted from the court's discussion in *AGD I.* In *AGD I*, the court addressed arguments raised by pipelines that the selective discounting regulations might lead to the pipelines under-recovering their costs. The court set forth a numerical example showing that the pipeline could under-recover its costs, if, in the next rate case after a pipeline obtained throughput by giving discounts, the Commission nevertheless designed the pipeline's rates based on the full amount of the discounted throughput, without any adjustment.[4] However, the court found no reason to fear that the Commission would employ this ''dubious procedure,'' [5] and accordingly rejected the pipelines'' contention.

4. In response to the court's concern, the Commission, in the 1989 *Rate Design Policy Statement*,[6] held that if a pipeline grants a discount in order to meet competition, the pipeline is not required in its next rate case to design its rates based on the assumption that the discounted volumes would flow at the maximum rate, but may reduce the discounted volumes so that the pipeline will be able to recover its cost of service. The Commission explained that if a pipeline must assume that the previously discounted service will be priced at the maximum rate when it files a new rate case, there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business.

5. Since *AGD I* and the Rate Design Policy Statement, the issue of ''gas-on-gas'' competition, *i.e.*, where the competition for the business is between pipelines as opposed to competition between gas and other fuels, has been raised in several Commission proceedings.[7] In these proceedings, certain parties have questioned the Commission's rationale for permitting discount adjustments, *i.e.*, that it benefits captive customers by allowing fixed costs to be spread over more units of service. These parties have contended that, while this may be true where a discount is given to obtain a customer who would otherwise use an alternative fuel and not ship gas at all, it is not true where discounts are given to meet competition from other gas pipelines. In the latter situation, these parties have argued, gas-on-gas competition permits a customer who must use gas, but has access to more than one pipeline, to obtain a discount. But, if the two pipelines were prohibited from giving discounts when competing with one another, the customer would have to pay the maximum rate to one of the pipelines in order to obtain the gas it needs. This would reduce any discount

[1] 111 FERC ¶ 61,309 (2005).

[2] 109 FERC ¶ 61,202 at P 2–10; 111 FERC ¶ 61,309 at P3–8.

[3] 824 F.2d 981, 1010–12 (D.C. Cir. 1987).

[4] *Id.* at 1012.

[5] Id.

[6] *Interstate Natural Gas Pipeline Rate Design,* 47 FERC ¶ 61,295, *reh'g granted,* 48 FERC ¶ 61,122 (1989).

[7] IMGA raised this issue in a petition for rulemaking in Docket No. RM97–7–000. In the NOI, the Commission stated that it would consider all comments on this issue in Docket No. RM05–2–000 and terminated the proceeding in Docket No. RM97–7–000. The Commission explained that the issues included in Docket No. RM05–2–000 include all the issues raised in the Docket No. RM97–7–000 proceeding. IMGA did not seek rehearing of the Commission's decision to terminate Docket No. RM97–7–000 proceeding and did not in its comments object to the procedural forum offered to it in Docket No. RM05–2–000.

adjustment and thus lower the rates paid by the captive customers.

6. On November 22, 2004, the Commission issued a Notice of Inquiry (NOI) seeking comments on its policy regarding selective discounting by natural gas pipelines.[8] The Commission asked parties to submit comments and respond to specific questions regarding whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline. The Commission also sought comments on the impact of its policy on captive customers. Comments were filed by 40 parties.

7. On May 31, 2005, after reviewing the comments, the Commission issued an order[9] reaffirming the Commission's current selective discounting policy. The Commission concluded that, in today's dynamic natural gas market, any effort to discourage pipelines from offering discounts to meet gas-on-gas competition would do more harm than good. Accordingly, the Commission decided not to modify its 16-year old policy to prohibit pipelines from seeking adjustments to their rate design volumes to account for discounts given to meet gas-on-gas competition.

8. The May 31 Order stated that interstate pipelines face three types of so-called gas-on-gas competition: (1) Competition from other interstate pipelines subject to the Commission's NGA jurisdiction, (2) competition from capacity releases by the pipeline's own firm customers, and (3) competition from intrastate pipelines not subject to the Commission's jurisdiction. The May 31 Order recognized that a significant portion of pipeline discounts are given to meet competition from other interstate pipelines. Some commenters contended that customers receiving such discounts are not fuel switchable and thus would take the same amount of gas even if required to pay the maximum rate of whichever pipeline they choose to use. The Commission rejected this contention, finding that discounts to non-fuel switchable customers can increase throughput and thus benefit captive customers. The Commission pointed to at least five examples of why this is so.

9. First, the Commission stated that industrial and other business customers of pipelines typically face considerable competition in their own markets and must keep their costs down in order to prosper. Lower energy costs achieved through obtaining discounted pipeline capacity can help them do more business than they otherwise would, thereby increasing their demand for gas.

10. Second, discounts may reduce the incentive for existing non-fuel switchable customers to install the necessary equipment to become fuel switchable. In addition, potential new customers, such as companies considering the construction of gas-fired electric generators, may be more likely to build such generators if they obtain discounted capacity on the pipeline.

11. Third, the Commission stated that an LDC's need for interstate pipeline capacity depends upon the demand of their customers for gas, and that demand is elastic, since some of their customers are fuel switchable. They also have non-fuel switchable industrial or business customers whose gas usage may vary depending upon cost.

12. Fourth, pipeline discounts may enable natural gas producers to keep marginal wells in operation for a longer period and affect their decisions on whether to explore and drill for gas in certain areas with high production costs.

13. Finally, the Commission pointed out that on many pipeline systems, the bulk of the pipelines' discounts are given to obtain interruptible shippers. All interruptible shippers may reasonably be considered as demand elastic, regardless of whether they are fuel switchable, since their choice to contract for interruptible service shows that they do not require guaranteed access to natural gas.

14. The Commission thus found no basis to conclude that overall interstate pipeline throughput would remain at the same level, if the Commission discouraged interstate pipelines from giving discounts in competition with one another. The Commission also found that, apart from the issue of the extent to which such discounts increase overall throughput on interstate pipelines, discounts arising from competition between interstate pipelines provide other substantial public benefits, which would be lost if the Commission sought to discourage such discounting. The Commission pointed out that, as a result of increased competition in the gas commodity and transportation markets, there are now market prices for the gas commodity in the production area and for delivered gas in downstream markets. The difference between these prices (referred to as the ''basis differential'') shows the market value of transportation service between those two points.

15. The May 31 Order found that discounting pipeline capacity to the market value indicated by the basis differentials provides a number of benefits. First, such discounting helps minimize the distorting effect of transportation costs on producer decisions concerning exploration and production. Second, if several interstate pipelines serve the same downstream market, discounting can help minimize short-term price spikes in response to increases in demand by making the higher cost pipeline more willing to discount down to the basis differential in order to bring more supplies to the downstream market. Third, discounting enables interstate pipelines with higher cost structures to compete with lower cost pipelines. Fourth, discounting helps facilitate discretionary shipments of gas into storage during off-peak periods. Finally, selective discounting helps pipelines more accurately assess when new construction is needed.

16. In addition, the May 31 Order found that a discount adjustment for discounts given in competition with capacity release promotes the Commission's goal of creating a robust competitive secondary market, and that discouraging pipelines from competing in this market would defeat the purpose of capacity release and eliminate the competition that capacity release has created. The Commission also pointed out that capacity release provides substantial benefits to captive customers. Similarly, the Commission determined in the May 31 Order that there was no reason to create an exemption from the selective discounting policy for expansion capacity. However, the Commission stated that under the Commission's current policy as set forth in the *Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Pricing Policy Statement)*,[10] unless the new construction benefits current customers, the services must be incrementally priced and the Commission would not approve a discount adjustment that would shift costs to current customers.

17. IMGA and Northern Municipals seek rehearing of the May 31 Order. Generally, these parties argue that the May 31 Order is not based on substantial or factual evidence, that the selective discount policy does not benefit captive customers, that the Commission has not properly assigned the burden of proving that discounts were given to meet competition, and

[8] 109 FERC ¶ 61,202 (2004).

[9] 111 FERC ¶ 61,309 (2005).

[10] 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on further clarification*, 92 FERC ¶ 61,094 (2000).

that the Commission did not address certain arguments of the parties that oppose the policy. The issues raised in the requests for rehearing are discussed below.

Discussion

A. Procedural Matters

18. The NOI invited interested persons to submit comments and other information on the matters raised by the NOI within 60 days. The NOI did not provide for reply comments. Forty parties submitted comments in response to the NOI. Only one party, IMGA, filed reply comments. In the May 31 Order, the Commission found that in these circumstances, it would not consider IMGA's reply. On rehearing, IMGA argues that it was error for the Commission to reject their reply comments.

19. The Commission has broad discretion to establish the procedures to be used in carrying out its responsibilities.[11] In this case, the Commission sought comments and responses to specific questions from interested parties, but did not authorize the filing of replies to the comments. Because reply comments were not authorized and IMGA was the only party to file reply comments, the Commission reasonably determined that it would not be appropriate or fair to the other parties in the proceeding to consider IMGA's reply comments. This was not error and was clearly within the Commission's discretion. In any event, IMGA's request for rehearing sets forth the arguments that IMGA made in its reply comments and those arguments are addressed in this order.

B. Substantial Evidence in Support of the Policy

20. Throughout their requests for rehearing, both IMGA and Northern Municipals argue that the Commission's decision is not supported by substantial evidence because it is not based on facts and empirical data, but is based on theory and speculation. Northern Municipals assert that the Commission has not provided any hard data or factual support for its conclusion that the selective discounting policy will increase overall throughput and benefit captive customers. Instead, Northern Municipals state, the Commission posited a number of examples that might lead to increased throughput. However, they argue, the Commission failed to quantify any increase in throughput, failed to analyze whether the increase would be in the form of an overall increase to the national grid or simply an increase to one pipeline and a decrease to another, and failed to analyze whether the benefits of such an increase to captive and other customers would be outweighed by the costs of subsidizing the discounts. Similarly, IMGA argues that the May 31 Order merely adopts the comments of the supporters of the policy and that those comments were based on allegation and speculation, rather than substantial evidence.

21. Northern Municipals assert that the Commission should engage in a cost/benefit analysis of the policy and should review all orders issued on the merits for base rate cases for a period of time to determine how often discount adjustments were allowed and whether pipelines routinely file for such adjustments. If discounts are routinely allowed, Northern Municipals argue, that is an indication that the pipeline considers the recovery of discounts an entitlement, and this undermines the validity of the Commission's premise that pipelines will always seek the highest rate for their service.

22. While the Commission will address below Northern Municipals' and IMGA's arguments regarding the basis for each of the Commission's challenged findings, some general comments about the type of evidence considered in this proceeding are appropriate at the outset. Rehearing applicants ask the Commission to change a policy of 16 years and establish a blanket rule that prohibits pipelines from seeking a discount adjustment in a rate case for discounts given to meet gas-on-gas competition. While the permission given by the Commission to pipelines to discount their rates between a minimum and maximum rate was promulgated in Order No. 436 and adopted as a regulation,[12] the adjustment in throughput to recognize discounting is not a rule, but is a policy that was adopted by the Commission in the *Rate Design Policy Statement*.[13] Therefore, in individual rate cases, the parties are free to develop a record based on the specific circumstances on the pipeline to determine whether the discounts given were beneficial to captive customers. The pipeline has the burden of proof under section 4 of the NGA in a rate case to show that its proposal is just and reasonable. If there are circumstances on a particular pipeline that may warrant special considerations or disallowance of a full discount adjustment, those issues may be addressed in individual proceedings.[14] Parties in a rate proceeding may address not only the issue of whether a discount was given to meet competition, but also issues concerning whether the discount was a result of destructive competition and whether something less than a full discount adjustment may be appropriate in the circumstances.

23. The November 22 NOI gave all participants in the natural gas industry an opportunity to provide comments on whether gas-on-gas discounts help increase overall throughput on interstate pipelines and asked specific questions concerning whether customers receiving such discounts could increase their throughput. The Commission did this to develop a record upon which to base its decision whether to change the selective discounting policy. Forty parties filed comments. The Commission appropriately relies on the record developed and the comments of experienced industry participants. Because the Commission provided all interested parties with an opportunity to present evidence, it need not now undertake a separate and independent analysis.

24. Further, the Commission need not undertake such an analysis for the purposes of determining whether, as Northern Municipals allege, the Commission's rationale for the policy is undermined because discount adjustments are ''routinely'' granted and pipelines therefore consider them an entitlement. The Commission does not routinely grant pipelines a discount adjustment, but grants such an adjustment only to the extent that the discount was required to meet competition. The Commission has denied pipelines the adjustment where the pipeline has failed to meet its burden of showing that the discount was required to meet competition. For example, in *Panhandle Eastern Pipe Line Co,*[15] *Williams Natural Gas Co,*[16] and *Trunkline Gas Co.,*[17] the Commission held that the pipeline had not met its burden to show that its discounts to its affiliates were required by competition. In addition, in *Iroquois Gas Transmission System*[18] and

[11] *E.g., Mobile Oil Exploration & Producing Southeast, Inc.* v. *United Distrib. Cos.,* 498 U.S. 211, 230 (1991); *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.,* 435 U.S. 519, 524–25, 543 (1978).

[12] 18 CFR 284.10 (2005).

[13] *Interstate Natural Gas Pipeline Rate Design,* 47 FERC ¶ 61,295, *reh'g granted,* 48 FERC ¶ 61,122 (1989).

[14] *See, e.g., Natural Gas Pipeline Company of America*, 73 FERC ¶ 61,050 at 61,128–29 (1995), and *El Paso Natural Gas Co.*, 72 FERC ¶ 61,083 at 61,441 (1995).

[15] 74 FERC at ¶ 61,109 at 61,401–02 (1996).

[16] 77 FERC at ¶ 61,277 at 62,206–07 (1996).

[17] 90 FERC at ¶ 61,017 at 61,096 (2000).

[18] 84 FERC at ¶ 61,086 at 61,476–78 (1998).

Trunkline Gas Co.,[19] the Commission disallowed a discount adjustment with respect to discounts given to non-affiliates. In both cases, the discounts were given to long-term, firm customers. The Commission found that the parties opposing the discount adjustment had raised enough questions about the circumstances in which those long-term discounts were given to shift the burden back to the pipeline to justify the discount. The Commission then found that, when a pipeline gives a long-term discount, the Commission would expect that the pipeline would make a thorough analysis whether competition required such a long-term discount, and in both these cases the pipeline had failed to present any evidence of such an analysis. A discount adjustment is not an entitlement and the pipelines would be ill-advised to consider it so.

25. Moreover, the Commission need not conduct such a fact-specific analysis in order to meet the requirement that its decision be supported by substantial evidence. In *AGD I*, the court explained that promulgation of generic rate criteria involves the determination of policy goals and the selection of the means to achieve them, and that courts do not insist on empirical data for every proposition on which the selection depends.[20] The court cited *Wisconsin Gas Co.* v. *FERC*,[21] where certain parties had objected to the Commission's curtailment of the minimum bill because it allegedly would result in shifting costs to captive customers. In response to these arguments, the Commission stated that the increased incentive to compete vigorously in the market would eventually lead to lower prices for all consumers. The court noted that the *Wisconsin Gas* court accepted this response without record evidence ''presumably because it viewed the prediction as at least likely enough to be within the Commission's authority.'' [22] The court further stated ''agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall; nor need they do so for predictions that competition will normally lead to lower prices.'' [23]

26. Similarly in *INGAA* v. *FERC*,[24] the Commission narrowed the right of first refusal (ROFR) to eliminate the ROFR for discounted contracts. In justifying this change, the Commission stated that if a customer is truly captive, it is likely that its contract will be at the maximum rate. Parties challenged this finding as not being based on substantial evidence, but rather on the agency's own supposition and presented hypothetical examples to the contrary. The court upheld the Commission and stated that while the Commission had cited no studies or data, its conclusion seemed largely true by definition and that it was a ''fair inference'' that customers paying less than the maximum rate for service had other choices in the market. The court further found that the hypothetical counter examples given by the petitioners failed to undermine the Commission's conclusion that generally, discounts are given in order to obtain and retain load that the pipeline could not transport at the maximum rate because of competition.

27. In *AGD I*, the court cited to economic treatises in reaching its decision,[25] and courts rely on economic theory in their decisions. For example, the decisions in *Williston Basin* v. *FERC*,[26] *Iroquois Gas Transmission System* v. *FERC*,[27] and *Arco Alaska, Inc.* v. *FERC*,[28] rely on economic theory in reaching their conclusions. Therefore, the Commission rejects the arguments of Northern Municipals and IMGA that the May 31 Order is not based on substantial evidence because it relies on economic theory rather than empirical data. To the extent that the Commission's orders on the selective discounting policy rely on economic theory, that is entirely proper, and economic theory may be the basis for the Commission's decision.

C. Legal Basis for Upholding the Policy

28. In the May 31 Order, the Commission discussed its responsibilities under the NGA and cited to Order No. 636:

> The Commission's responsibility under the NGA is to protect the consumers of natural gas from the exercise of monopoly power by the pipelines in order to ensure consumers ''access to an adequate supply of gas at a reasonable price.'' [*Tejas Power Corp.* v. *FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990).] This mission must be undertaken by balancing the interests of the investors in the pipeline, to be compensated for the risks they have assumed, and the interests of consumers, and in light of current economic, regulatory, and market realities.[29]

The Commission then concluded that, in light of existing conditions in the natural gas market, its existing policies concerning selective discounting are more consistent with the goal of ensuring adequate supplies at a reasonable price, than any of the alternatives proposed in the comments in response to the NOI.

29. On rehearing, IMGA argues that the Commission did not apply the proper legal criteria in reaching its conclusion. IMGA argues that the selective discount policy is unlawful unless it can be shown that it produces a net benefit to captive customers [30] and that the burden of proof is on the supporters of the policy to produce substantial evidence to show that the discount adjustment benefits captive customers. It argues that the Commission's cite to *Tejas* was taken out of context and that it is a ''perversion of the ruling in *Tejas Power Corp.* to employ it to support a conclusion that it is okay to exploit captive customers where that exploitation could arguably increase gas supply because it produces higher prices.'' IMGA states that regardless of whether higher gas prices is a lawful objective, it is not lawful if the mechanism produces a violation of the prohibition against undue discrimination of sections 4 and 5 of the NGA. Further, IMGA argues, it is of no benefit to captive shippers that the discount adjustment reduces their transportation costs if it also increases their gas supply costs, and that in *Maryland People's Counsel* v. *FERC*, [31] the court concluded that it was unlawful for the Commission to focus only on the benefits of lower transportation costs and ignore the potential offsetting impact of higher gas prices.

30. The Commission has correctly stated its responsibilities under the

[19] 90 FERC at ¶ 61,017 at 61,092–95 (2000).

[20] 824 F.2d at 1008.

[21] 770 F.2d 1144 (D.C. Cir. 1985).

[22] 824 F.2d at 1008.

[23] *Id.* at 1008–09.

[24] 285 F.3d 18 at 55 (D.C. Cir. 2002).

[25] *Id.* at 1010 (citing 2 A. Kahn, *The Economics of Regulation: Principles and Institutions* (1987)), 1011n.12 (citing E. Gellhorn & R. Pierce, *Regulated Industries* 185–89 (1987)), and n.13 (citing, *inter alia,* Tye & Leonard, *On the Problems of Applying Ramsey Pricing to the Railroad Industry with Uncertain Demand Elasticities,* 17A Transportation Research 439 (1983)).

[26] 358 F.3d 45, 49–50 (D.C. Cir. 2004) (citing Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions* 132–33 (1988)).

[27] 172 F.3d 84, 89 (D.C. Cir. 1999) (''We note that classic analysis of non-cost-based discounting by carriers has turned on differences in the price elasticity of demand for the carried product. It pursues the goal of an optimal trade-off between the desirability of maximizing output and the necessity of the utility's recovering all its costs.'').

[28] 89 F.3d 878, 883 (D.C. Cir. 1996) (Explaining the now ''inverse-elasticity rule, Ramsey Pricing allocates joint costs in inverse proportion to the demand elasticities of different customers to yield the most efficient use of a pipeline.).

[29] Order No. 636 at 30,392.

[30] IMGA cites the Order No. 637 NOPR, *Transcontinental Gas Pipe Line Corp.* v. *FERC,* 998 F.2d 1313, 1318, 1321 (D.C. Cir. 1993); *Columbia Gas Transmission Corp.* v. *FERC,* 848 F.2d 250, 251–254 (D.C. Cir. 1988); *Maryland People's Counsel* v. *FERC,* 761 F.2d 768, 770–771 (D.C. Cir. 1985).

[31] IMGA cites 761 F.2d 768, 770–71 (D.C. Cir. 1988).

NGA. The citation to Order No. 636 and *Tejas* merely state, as do numerous other Commission and court decisions,[32] that the Commission's responsibility under the NGA is to ensure customers access to natural gas at reasonable prices, and that in carrying out its mission, the Commission must balance a number of competing interests. In Order No. 636, the Commission cited to the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act),[33] enacted by Congress in order to create more abundant natural gas supplies at lower prices by creating competition among efficient producers.[34] The House Committee Report urged the Commission to ''retain and improve'' the competitive structure in natural gas markets in order to maximize the benefits of wellhead price decontrol.[35] The Decontrol Act did not, however, alter the Commission's consumer protection mandate.

31. Thus, the Commission must, in all of its decisions, balance a number of interests, and that is what it has done here. The Commission recognizes its obligation to protect captive customers and it has met that obligation here. However, the Commission also has broad responsibilities to develop policies of general applicability. The Commission has analyzed the concerns of IMGA and Northern Municipals in the context of the overall benefits to the national pipeline system provided by the selective discount policy. The Commission has concluded that the selective discount policy, including allowing a discount adjustment for gas-on-gas competition, generally benefits all customers including customers who do not receive the discount.

32. We find IMGA's view of the Commission's responsibilities too narrow. Under IMGA's view, if there could be circumstances where a discount does not benefit captive customers then the policy must be abandoned. While the Commission has concluded that the selective discounting policy generally benefits all customers, it has also recognized that there may be circumstances on some pipelines where captive customers may require additional protections. It is not necessary, however, for the Commission to eliminate entirely the discount adjustment for gas-on-gas competition in order to address those limited situations. The cases cited by IMGA are not to the contrary.

33. As the Commission explained in the May 31 Order, it is possible to adopt measures to protect small publicly owned municipal gas companies in circumstances where the policy works an undue hardship on them and at the same time retain the competitive benefits of the policy for the majority of shippers. This is the proper balancing of interests in this proceeding and the Commission applied the appropriate legal standards in balancing these interests. The Commission's decision here meets both goals of promoting a competitive natural gas market and protecting captive customers. This is the type of balancing decision that the courts have recognized is within the Commission's discretion in developing its policies in a competitive marketplace.[36]

34. IMGA's characterization of the Commission's decision as concluding that it is ''okay'' to exploit captive customers where that exploitation could increase gas supply by producing higher prices is not an accurate characterization of the Commission's decision. As stated above, it is the Commission's responsibility to ensure that consumers have access to natural gas at reasonable prices, not to promote policies that increase prices, and there is no basis for concluding that the discount policy increases the delivered price of natural gas to consumers. Further, it is clearly established that selective discounting based on different demand elasticities does not constitute undue discrimination under the NGA.[37]

D. There Is Substantial Evidence To Support the Commission's Conclusion That Discouraging Discounts Would Do More Harm Than Good

35. IMGA and Northern Municipals argue that the Commission's decision that discouraging gas-on-gas discounting by disallowing any adjustment to rate design volumes to account for such discounts would do more harm than good is not based on substantial evidence. They raise a number of issues which, they allege, the Commission either failed to address or did not adequately address in the May 31 Order. As the May 31 Order stated, there are three different categories of gas-on-gas competition. One category is competition from other interstate pipelines subject to the Commission's jurisdiction. The second category is competition from capacity releases by the pipeline's own firm customers. The third category is competition from interstate pipelines that are not subject to the Commission's jurisdiction. The May 31 Order gave different reasons for allowing discount adjustments for each of these categories of gas-on-gas discounts. Accordingly, in addressing the rehearing requests, we will continue to discuss these categories of gas-on-gas competition separately.

1. Competition From Other Interstate Pipelines

36. IMGA and Northern Municipals contend that the Commission erred in not adopting their proposals to adopt a rule prohibiting adjustments to rate design volumes for discounts a pipeline gives in competition with another interstate pipeline. They attack both of the primary bases of the Commission's decision: (1) that gas-on-gas discounts do play a role in increasing throughput on interstate pipelines and (2) such discounts provide substantial other public benefits which would be lost if the Commission sought to discourage such discounting.

37. Before addressing the specific arguments of the two rehearing applicants in support of their position, several general comments are in order. First, the Commission has never codified its policy concerning discount adjustments in any definitive rule or regulation. Rather, the Commission has developed its discount adjustment policy first through the 1989 Rate Design Policy Statement and subsequently in individual rate cases. Under that policy, the pipeline may propose as part of a section 4 rate filing to adjust its rate design volumes to account for any discounts it gave during the test period, including discounts given in competition with other pipelines. By proceeding on this basis, the Commission must find, based on the record developed in each rate case, that the pipeline has met its section 4 burden to show that any approved discount adjustment to rate design volumes is just and reasonable.[38] In addition, as the Commission stated in the May 31 Order [39] and discusses further below, the Commission will consider the impact of any discount adjustment on captive customers in specific proceedings. The Commission's termination of the instant rulemaking

[32] *E.g., FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 603 (1943); *Atlantic Refining Co.* v. *Public Service Commission of New York,* 360 U.S. 378, 388, 389, 392 (1959) (fundamental purpose of NGA is to assure the public of a reliable supply of gas at reasonable prices).

[33] 103 Stat. 157 (1989).

[34] Order No. 636, Regulations Preambles ¶ 30,939 at p. 30,397 (1992), citing H.R. Report No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

[35] H.R. Report No. 29, *supra,* at p.2.

[36] *See, e.g., Midcoast Interstate Transmission, Inc.* v. *FERC,* 198 F.3d 960, 970 (D.C. Cir. 2000).

[37] *E.g., AGD I* at 1011; *United Distribution Companies* v. *FERC,* 88 F.3d 1105, 1142 (D.C. Cir. 1996).

[38] *Pacific Gas & Electric Co.* v. *FPC,* 506 F.2d 33, 48 (D.C. Cir. 1974).

[39] 111 FERC ¶ 61,309 at P 57.

proceeding is a decision to continue to address the discount adjustment issue in the same case-by-case manner. Thus, the May 31 Order should not be interpreted as establishing any definitive rule that pipelines will in all instances be permitted a full discount adjustment for discounts given in competition with another pipeline. Rather, the Commission simply determined in the May 31 Order to reject the rehearing applicants' proposal to establish a definitive rule prohibiting pipelines from proposing in section 4 rate cases discount adjustments with respect to discounts given in competition with other pipelines.

38. Second, the Commission's approach to this issue appropriately balances several factors. Given the increasingly competitive nature of both the gas commodity and pipeline capacity markets, the Commission believes there are undeniable public benefits to giving pipelines flexibility to discount their rates consistent with the market value of their capacity, including in the context of competition with other interstate pipelines. At the same time, the Commission must take into account the effect of such discounting on truly captive customers. While the Commission believes that in most instances such discounts either help keep the rates of the captive customers lower than they otherwise would be or are at least neutral in effect, the Commission recognizes that there may be some situations where gas-on-gas discounting could shift costs to the captive customers. However, the Commission believes that such situations are sufficiently isolated that they are best dealt with on a case-by-case basis, rather than by establishing a generic rule discouraging interstate pipelines from giving discounts in competition with one another.

39. The Commission now turns to a discussion of the public benefits of competition between interstate pipelines. The May 31 Order found that pipeline discounts in competition with one another leads to more efficient use of the interstate pipeline grid by enabling pipelines to adjust the price of their capacity to match its market value, and that discouraging such discounting would lead to harmful distortions in both the commodity and capacity markets. On rehearing, IMGA and Northern Municipals argue that there is no substantial evidence in the record to support this conclusion. The Commission disagrees.

40. As the Commission found in both Order No. 637 and the May 31 Order, and as many of the comments in this proceeding reiterate,[40] the deregulation of wellhead natural gas prices, together with the requirement that interstate pipelines offer unbundled open access transportation service, has increased competition and efficiency in both the gas commodity market and the transportation market. Market centers have developed both upstream in the production area and downstream in the market area. Such market centers enhance competition by giving buyers and sellers a greater number of alternative pipelines from which to choose in order to obtain and deliver gas supplies. As a result, buyers can reach supplies in a number of different producing regions and sellers can reach a number of different downstream markets.

41. The development of spot markets in downstream areas means there is now a market price for delivered gas in those markets. That price reflects not only the cost of the gas commodity but also the value of transportation service from the production area to the downstream market. The difference between the downstream delivered gas price and the market price at upstream market centers in the production area (referred to as the ''basis differential'') shows the market value of transportation service between those two points. As a result, ''gas commodity markets now determine the economic value of pipeline transportation services in many parts of the country. Thus, even as FERC has sought to isolate pipeline services from commodity sales, it is within the commodity markets that one can see revealed the true price for gas transportation.'' [41] These basis differentials vary on a daily and seasonal basis as market conditions change and are largely determined by the gas-on-gas competition that occurs at the market centers.[42]

42. Under the Commission's original cost method of determining just and reasonable rates, the maximum just and reasonable rate in a pipeline's tariff reflects embedded costs and depreciation. As a result, the pipeline's maximum tariff rate need not reflect the market value of its capacity on any given day or season of the year. Moreover, the maximum rates of competing pipelines may substantially differ from one another. Allowing each pipeline to discount its capacity to the market value indicated by the basis differentials taking into account the time period over which the discount will be in effect provides greater efficiency in the production and distribution of gas across the pipeline grid, promoting optimal decisions concerning exploration for and production of the gas commodity and transportation of gas supplies to locations where it is needed the most and during the time periods when it is needed.

43. The May 31 Order gave a number of examples of the public benefits provided by enabling pipelines to discount their rates to the market value. First, such discounting helps minimize the distorting effect of transportation costs on producer decisions concerning exploration and production. Second, discounting enables interstate pipelines with higher cost structures to compete with lower cost pipelines. Third, if several interstate pipelines serve the same downstream market, discounting can help minimize short-term price spikes in response to increases in demand by making the higher cost pipeline more willing to discount down to the basis differential in order to bring more supplies to the downstream market. Fourth, discounting helps facilitate discretionary shipments of gas into storage during off-peak periods. Finally, selective discounting helps pipelines more accurately assess when new construction is needed.

44. IMGA and Northern Municipals contest each of the public benefits found by the Commission. However, a large majority of the commenters in this proceeding affirmed that discounts given by competing pipelines based on the market value of their capacity do produce significant public benefits. IMGA and Northern Municipals do not seriously contest the finding that basis differentials between two points show the current market value of the transportation capacity between those two points. Rather, they suggest, in essence, that by discouraging pipelines from discounting maximum rates that exceed the basis differentials, the Commission could force whatever reductions in the delivered price of gas the market requires to be made with respect to the commodity component, rather than the transportation component of the delivered price. For example, IMGA states that, without discounts, wellhead prices may fall somewhat. However, the Commission believes that any effort to insulate one component of a price from market forces would cause harmful distortions and ultimately fail.

45. IMGA and Northern Municipals contend that, in today's market, with its higher natural gas commodity prices,

[40] *Id.* at P 31.

[41] Order No. 637 at 31,274 (*quoting* M. Barcella, How Commodity Markets Drive Gas Pipeline Values, Public Utilities Fortnightly, February 1, 1998 at 24–25).

[42] Gulf South comments at 17.

there is no need to be concerned that unavailability of discounts to the basis differentials could lower producer net backs. They argue that, if no discount is granted, the producer will either adjust its price to clear this market, or will choose to flow its gas to some other market where a consumer is willing to pay more, a correct result in a competitive market. Also, Northern Municipals suggest that, given the deregulation of wellhead prices, the Commission should no longer be concerned with the effect of interstate transportation rates on producers.

46. However, as already discussed, when Congress deregulated wellhead prices in 1989, it directed that the Commission exercise its remaining NGA jurisdiction over transportation in manner that would improve the competitive structure of the natural gas market. In response to that directive, the Commission has consistently taken into account the effect of its rate policies on natural gas production, most significantly when it adopted the straight fixed variable (SFV) rate design for firm transportation rates in Order No. 636. The purpose of that policy was to minimize the distorting effect of transportation costs on producer decisions concerning exploration and production. As the Commission stated in the May 31 Order, the various interstate pipelines competing in the same downstream markets generally bring gas from different supply basins. For example, different interstate pipelines serving California are attached to supply basins in the Texas, Oklahoma, Gulf Coast area; the Rocky Mountain area, and Canada. Given the differences between pipeline maximum rates based on their differing historical costs and given the fact that market value of transportation between two points is at times less than the pipeline maximum rates, any effort by the Commission to insulate pipelines from market forces would be inconsistent with the Congress's directive that the Commission seek to improve the competitive structure of the natural gas market. Without discounts by the higher cost pipelines, producers in supply basins served by higher cost pipelines would generally face the burden of any price reductions necessary to meet the market price for delivered gas in the downstream areas.[43] As a result, gas reserves from supply areas served by lower cost pipelines would have a built-in cost advantage over gas reserves served by higher cost pipelines.

47. IMGA and Northern Municipals also contend that the Commission's statement that discounts help interstate pipelines with higher cost structures to compete with lower cost pipelines, enabling the capacity for both pipelines to be utilized in the most efficient manner possible, provides no support for the selective discounting policy. However, it is clear that in such a situation the pipeline with the higher maximum rate may need to discount to compete with the pipeline with the lower maximum rate to the extent the pipeline with the lower maximum rate has available capacity. Discouraging the pipeline with the higher maximum rate from discounting in that situation would only harm that pipeline's captive customers, since it would lose throughput over which it could otherwise spread its fixed costs. IMGA and Northern Municipals suggest that such discounts would provide no overall public benefit, since they would not increase overall throughput on both interstate pipelines. Rather such discounts would only serve to switch throughput from one pipeline to the other. However, the Commission finds there is a clear public benefit to maximizing the ability of higher cost pipelines to compete with lower cost pipelines. Otherwise, the higher cost pipeline will tend always to lose throughput over which to spread its fixed costs, thus exacerbating the difference in rates between the two pipelines making it more and more difficult for the higher cost pipeline to compete and leading the captive customers of the higher cost pipeline to bearing an inequitably high transportation cost vis-á-vis the captive customers of the lower cost pipeline.[44]

48. Indeed, discounting has become an integral part of today's dynamic natural gas market.[45] The U.S. natural gas pipeline grid has become increasingly interconnected since the transition to unbundled, open access transportation service pursuant to Order Nos. 436, 636, and 637, with pipeline companies making substantial investments in constructing new pipeline facilities. In response to a 2005 INGAA survey, 36 pipelines reported that they had spent $19.6 billion for interstate pipeline infrastructure between 1993 and 2004, and during the 1990s interregional natural gas pipeline capacity grew by 27 percent.[46] As a result, most major markets are now served by multiple interstate pipelines. For example, customers in the Chicago metropolitan area are served by eleven interstate pipelines, giving them access to natural gas supplies in Western Canada, the Rocky Mountains, New Mexico, Oklahoma, Michigan, Louisiana, the Gulf coast, and Texas.[47] In this environment, gas-on-gas competition and alternate fuel competition are interchangeable. Discounts given by competing pipelines also serve to increase the market share of natural gas versus alternate fuels.[48]

49. In their rehearing requests, IMGA and Northern Municipals contend that, whatever public benefits may arise from discounts given by one interstate pipeline to meet competition from another interstate pipeline, captive customers should not have to bear the cost of those discounts through a discount adjustment to rate design volumes. They contend that the Commission erred when it found that such discounts benefit captive customers, since the customers receiving such discounts are demand elastic and therefore those discounts help increase overall throughput on interstate pipelines.

50. In their rehearing requests, IMGA and Northern Municipals do not seriously contest the Commission's finding that such discounts will increase the demand of the customers receiving them in at least some of the ways found by the Commission. For example, the Commission stated that industrial and other business customers of pipelines typically face considerable competition in their own markets and must keep their costs down in order to prosper. Lower energy costs achieved through obtaining discounted pipeline capacity can help industrial and other business customers of pipelines, who typically face considerable competition in their own markets, do more business than they otherwise would, thereby increasing their demand for gas. Also, such discounts may reduce the incentive for existing non-fuel switchable customers to install the necessary equipment to become fuel switchable. In addition, potential new customers, such as companies considering the construction of gas-fired electric generators, may be more likely to build such generators if they obtain discounted capacity on the pipeline.

51. However, the thrust of IMGA and Northern Municipals' argument is that

[43] Reliant Energy at 11; Gulf South at 30.

[44] See Michigan Consolidated Gas Co. comments at 4–5, describing the adverse effect on TransCanada Pipeline and its customers due to its inability to discount in competition with the United States pipelines; Transco comments at 9–10.

[45] INGAA comments at 7–10; Duke comments at 18–22; Transco comments at 5–8, 27–28; Process Gas comments at 3–4; Gulf South comments at 10, 11, 17–19; Dominion Resources comments at 3–5; NGSA comments at 8–10.

[46] INGAA comments at 9.

[47] Kinder Morgan comments at 10.

[48] Kinder Morgan comments at 7, 18.

the Commission has not shown that such increased demand will translate into increased overall throughput or revenues on interstate pipelines. IMGA contends that a study presented by INGAA in its comments shows that the demand elasticity in the natural gas transportation market is very limited, with the result that, for every 10 percent decrease in the price of transportation, demand for transportation increases by only about 1.2 percent.[49] IMGA contends that, as a result, any additional revenues generated by a pipeline decreasing its rates through discounts in competition with another pipeline will not offset the effects of the rate decreases.[50] IMGA also argues that even if a discounted rate given to customers with access to more than one pipeline would cause them to increase their consumption of natural gas, the increased price that the discount adjustment would charge to captive shippers would cause them to decrease their consumption by a similar amount. IMGA states that this is because the difference between captive customers and discounted shippers is not the elasticity of their demand, but whether there are alternative pipelines from which they can purchase.

52. Similarly, Northern Municipals state that the Commission makes conclusory statements that overall throughput on the national grid will increase as a result of discounting, but provides no studies or evidence to back this up. Similarly, Northern Municipals argue that unless the reduction in fixed costs to captive and other customers is greater than the discounts they are forced to absorb, the increase in throughput does nothing to protect the interests of captive customers and, they allege, there is no solid evidence to support the conclusion that any increase in throughput will result in a net decrease in rates to consumers. Northern Municipals states that the May 31 Order provides no support for the presumption that increased throughput results in more spreading of fixed costs, thus benefiting consumers that are not entitled to discounts by providing them with lower overall rates. They state that the only thing the order proves is that if a rate is discounted heavily enough, it may attract some additional volumes. But, they argue, if the discount the ratepayers must absorb is greater than the offsetting reduction in the portion of the fixed costs that those ratepayers must bear, there is no justification for the discount.

53. The Commission recognizes that the discounts a pipeline gives in competition with another interstate pipeline may or may not increase the overall revenue collected by interstate pipelines. As discussed below, the revenue effects of particular gas-on-gas discounts given by a pipeline depend on the circumstances in which the pipeline gave the discount. However, the Commission's experience has been that such discounts generally do not cause significant cost shifts to captive customers. Therefore, the Commission reaffirms its conclusion that discounts given by competing pipelines provide sufficient public benefits that we will not modify our policy to adopt a blanket prohibition on adjustments to rate design volumes to reflect such discounts. As we stated in the May 31 Order, if there are circumstances on a particular pipeline that warrant additional protections for captive customers, including a limitation on the discount adjustment to rate design volumes, those issues can be considered in individual rate cases.

54. IMGA and Northern Municipals assume that, where two pipelines compete with one another they will engage in a destructive bidding war, with the result that all customers with access to the two pipelines will receive heavily discounted rates for all their service without regard to their elasticity of demand. However, this assumes that in such a situation the customers with access to the two pipelines will have all the bargaining power, and the two pipelines will have none. This is unlikely to be the case. If the total capacity of the two pipelines is not greatly in excess of the demand for transportation service in the markets served by the two pipelines, competition between the customers for the pipelines' capacity should give the pipelines some ability to minimize any discounts and target the discounts they do give to the customers whose demand will increase with a lower rate so as to fill the pipeline.

55. Moreover, pipelines have an incentive not to discount too deeply, because they recognize that, to the extent they do file a rate case to attempt to raise rates to their remaining customers, the demand of those customers could go down. Also, those customers would then have more of an incentive to seek alternatives of their own, for example through participating in the expansion of another pipeline. The affidavit of Bruce Henning, submitted by INGAA and relied on by IMGA, pointed out that long-run elasticities of demand are always higher than short-term demand elasticities, usually two to three times.[51] That is because in the long-run consumers can make capital investments to increase price responsiveness, including investments to increase their efficiency, and their alternative fuel capacity. In addition, the pipelines should recognize that the Commission has stated that it may not permit a full discount adjustment in situations where that would lead to an inequitable result.[52]

56. There is nothing in the record developed in response to the NOI to suggest that the Commission's general policy of permitting pipelines to propose discount adjustments for gas-on-gas competition has led to a widespread cost shift to captive customers. The NOI asked the commenters for specific examples of rate cases where the discount adjustment has impacted captive customers. No party was able to point to any rate case where discounts due to gas-on-gas competition actually caused a substantial cost shift to captive customers. In response, IMGA referred to discounts in Docket No. RP95–326, *Natural Gas Pipeline Co. of America*, where, IMGA asserts, discounts produced adjustments in throughput that resulted in rates so high that Natural chose not to increase their tariff rates as much as could have been justified. IMGA also referred to *Southern Natural Gas Co.*,[53] where it had submitted testimony concerning discounts given by Southern during the period May 1992 through April 1993. Northern Municipals referred to the discount given to CenterPoint on Northern.

57. These specific Commission proceedings cited by the parties seeking rehearing do not support a finding that gas-on gas discount adjustments have caused a significant cost shift to captive customers, requiring a drastic policy change seeking to discourage such discounts. Instead, they support the conclusion that individual rate cases provide the appropriate forum for determining the extent to which a discount adjustment for this type of discount is just and reasonable in the circumstances of the particular case. As IMGA points out, in the *Natural*

[49] IMGA cites pages 14–15 of an affidavit by Bruce B. Henning attached to INGAA's comments.

[50] IMGA illustrates its contention with the following example: It assumes a pipeline with revenues of $250.00 based on charging $.50 per Mcf for throughput of 500 Mcf. If the pipeline reduced its rate by 10 percent to $.45 per Mcf in order to increase its throughput by 1.2 percent to 506 Mcf, it would then generate revenues of $227.70, about 9 percent less than its revenues without the rate reduction.

[51] Henning Affidavit at 15.

[52] *See Natural Gas Pipeline Company of America,* 73 FERC ¶ 61,050 at 61,128–29 (1995), and *El Paso Natural Gas Co.,* 72 FERC ¶ 61,083 at 61,441 (1995).

[53] 65 FERC ¶ 61,348 (1993).

decision, the circumstances resulted in the pipeline not implementing the full discount adjustment. Indeed, in its rehearing request,[54] IMGA recognizes that Natural, and a second pipeline which faces substantial gas-on-gas competition, Gulf South Pipeline Company, have been able to engage in effective and efficient competition. As a result, they have not had to shift large amounts of costs to captive customers through discount adjustments. IMGA also recognizes that one factor in the ability of these pipelines to successfully compete has been the Commission's 1996 policy of permitting pipelines to negotiate rates using a different rate design from their recourse rates.[55]

58. In the *Southern* decision cited by IMGA, the parties reached a settlement. Moreover, in the May 31 Order the Commission found that the testimony presented in that case concerning discounting practices of one interstate pipeline over ten years ago are not probative of the prevalence of gas-on-gas discounting by all interstate pipelines today,[56] and IMGA does not contest that finding in its rehearing request. As discussed more fully below, the issue of whether Northern should receive a full discount adjustment in connection with the CenterPoint discount has not been decided and parties will have an opportunity to address all the relevant facts concerning this discount in Northern's next rate case.

59. Thus, appropriate actions have been taken in individual rate cases to resolve this issue. In the individual rate cases, parties can investigate the specific facts surrounding the discount to determine whether a full discount adjustment is warranted and whether any special circumstances require additional protections for captive customers. This approach retains the competitive benefits of discounting and at the same time allows the Commission to take action to mitigate the impact of a discount adjustment if the circumstances require.

60. Thus, the Commission finds that the responses to the NOI produced no evidence to support IMGA's allegation in its brief to the D.C. Circuit on the appeal of Order No. 637 that the discount adjustment for gas-on-gas competition has burdened captive customers by a cost ''tilt of billions of dollars of costs.'' [57] As a result, the Commission concludes that a continuation of its current general policy permitting pipelines to seek discount adjustments for gas-on-gas discounts in individual section 4 rate cases, with the ability to consider limits on a case-by-case basis, strikes the best balance between enabling the industry to obtain the benefits of such discounting discussed above, while minimizing the potential ill effects. Thus, the Commission rejects the request of IMGA and Northern Municipals that it establish a blanket rule prohibiting pipelines from proposing such a discount adjustment in a section 4 rate case.

61. In its rehearing request, Northern Municipals contends that, even if the Commission does not prohibit discount adjustments for discounts given in competition with another pipeline, the Commission should require pipelines to demonstrate in their initial rate filing that such discounts actually increased throughput sufficiently that the proposed rates are lower than they would have been had no discount been granted. Under current Commission policy, the Commission gives shippers a full opportunity to litigate all issues concerning the justness and reasonableness of any proposed discount adjustment. While the Commission does not require pipelines in their initial rate filing to include evidence justifying why competition required each and every test period discount underlying the pipeline's proposed discount adjustment, the customers have the ability through discovery in the rate case to inquire into why the pipeline provided each such discount. In their rehearing requests, IMGA and the Northern Municipals seek to portray the Commission's presumption that discounts given to non-affiliates were required by competition as an insuperable obstacle to contesting the need for any such discounts. However, as the Commission clarifies elsewhere in this order that is not a correct interpretation of our policy. To the extent a pipeline is unable during the discovery process to explain what competitive alternatives the recipient of any particular discount had or otherwise give a satisfactory explanation of why the discount was required, that fact by itself would be sufficient to rebut the presumption that competition required the discount.

62. Moreover, as indicated by the Commission's orders in *Natural*[58] and *El Paso*,[59] even where a pipeline is able to show that particular discounts were required to meet competition from another pipeline, parties may argue that the competition between the two pipelines led to such deep discounts that a full discount adjustment would lead to an inequitable cost shift to the captive customers. As the Commission stated in the May 31 Order, the Commission continues to be mindful of its obligations to captive customers and will consider the impact of any discount adjustment on those customers in specific proceedings. In this regard, the Commission notes that Northern Municipals in its rehearing request has contended that certain discounts Northern has recently provided to two large LDCs will lead to an improper cost shift in Northern's next rate case. However, as the Commission has stated in its orders concerning those discounted rate transactions, if Northern proposes in its next rate case a discount adjustment based on those discounted rate transactions, the parties may litigate all issues concerning the justness and reasonableness of any such discount adjustment.

63. Finally, Northern Municipals refer to an example provided in the initial comments of the Commission's Office of Administrative Litigation (OAL) and assert that the Commission did not adequately refute the conclusion drawn from this example that overall throughput is not increased when a selective discount is given to meet gas-on-gas competition. We will restate that example here:

> Assume that an LDC is attached to three pipelines, Pipelines A, B, and C, each with their own contracts to transport 20,000 MMbtu/day. If the LDC's contract with Pipeline A is set to expire at the end of Year 1, the LDC will negotiate with all three pipelines to obtain the best price for the desired capacity. If Pipeline B offers the best discounted price, Pipeline A will have lost the contract. If the loss of volumes is sufficient Pipeline A will file a rate case, and receive an increase in rates, based on the reduced throughput of the lost LDC contract. All captive customers of Pipeline A will pay higher maximum rates.
>
> Meanwhile, Pipeline B will have increased its throughput by 20,000 MMbtu/day. All other things being equal, since Pipeline B's volumes now exceed those upon which its rates were designed by 20,000 MMbtu/day, the additional volumes will simply increase Pipeline B's earned rate of return until such time as the pipeline files a rate case.
>
> If, during of Year 2, the LDC's original contract with Pipeline B (a maximum rate contract for a different 20,000 MMbtu/day) expires, the pipelines again can bid for the capacity and offer discounts. If Pipeline C wins the contract, Pipeline B's overall throughput will decrease back down to the level it was at before it acquired the volumes from Pipeline A. Now, however, Pipeline B may have to file for a rate increase because, even though it is selling the same volumes

[54] IMGA rehearing at 20.

[55] *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076 (1996).

[56] 111 FERC ¶ 61,309 at P 20.

[57] *INGAA* v. *FERC*, 285 F.3d 18, 58 (D.C. Cir. 2002).

[58] 73 FERC ¶ 61,050 (1995).

[59] 72 FERC ¶ 61,083 (1995).

upon which its rates were designed, 20,000 MMbtu/day of those volumes (*i.e.*, the volumes it took from Pipeline A which it still has) now move at a discounted rate. As a result, Pipeline B will show a revenue shortfall, and it will be given a discount adjustment for the discounted rate it is receiving from the LDC for the capacity it acquired that originally was under contract with Pipeline A.

If, during Year 3, Pipeline C's original contract with the LDC expires, the pipelines again can bid for the capacity and offer discounts. If Pipeline C wins the contract again, but at a steep discount, it may have to file for a rate increase as its revenues may be short of its costs even though it has increased its throughput volumes.

64. Northern Municipals state that three conclusions can be drawn from this hypothetical: First, the LDC did not change the total amount of gas it transported and consumed. Second, two of the three pipelines were able to increase their earned rates of return for a period of time due to the excess volumes captured from the pipeline holding the original contract. Third, maximum rates to captive customers left on the LDC's original pipeline experienced an increase in rates due to the LDC's defection, and eventually, captive customers on the other pipelines also experienced an increase. Northern Municipals state that all this occurred with no increase in net throughput. Thus, they conclude, the final result is that the LDC and its customers enjoy lower rates, but the captive maximum rate and other customers pay higher rates with no corresponding benefits and, thus, subsidize the discount to the LDC.

65. There are several problems with this overly simple example, which was clearly developed to prove the result that it assumes. In the first place, the example assumes that both Pipeline B and Pipeline C have 20,000 MMBtu/day of unsubscribed capacity that is available for sale to the LDC. The example does not, however, explain how those units of unsubscribed capacity were accounted for in Pipeline B and C revenue requirement or the cost impact of the unsubscribed capacity on the current customers. If those costs are not being collected by Pipeline B and C, its customers will be better off if the pipeline sells its unsubscribed capacity at a discount, rather than if it files a rate case to recover the costs of the unsubscribed capacity from its current customers. The discounts will protect the captive customers from absorbing the full costs of the unsubscribed capacity. The example also assumes that if Pipeline A loses 20,000 MMBtu/d, it will file a rate case and the Commission will allow it to shift all the costs of its unsubscribed capacity to its captive shippers. Neither of these of scenarios may occur. Pipeline A would likely try to resell this capacity and, if Pipeline A did file a rate case, the Commission might not allow the recovery of all of the costs of the unsubscribed capacity from the captive customers. In any event, Northern Municipals does not cite any case or real-life example where anything like this occurred.

66. As discussed above, the Commission understands that there may be circumstances where gas-on-gas competition could result in discounts and no increase in throughput. However, this example cited by Northern Municipals provides no basis for making any changes in the Commission's current policy.

2. Competition From Capacity Release

67. In the May 31 Order, the Commission found that there was no basis for creating an exemption from the selective discounting policy for discounts that result from competition from capacity release. The Commission explained that its goal in creating the capacity release market in Order No. 636 was to create a robust competitive secondary market for capacity, and stated that the capacity release program, together with the Commission's policies on segmentation and flexible point rights has been successful in achieving this goal. The Commission stated that to prevent pipelines from competing effectively in this market would defeat the purpose of capacity release and eliminate the competition that capacity release has created. The Commission also explained that capacity release benefits captive customers by allowing them to compete with pipelines for their unused capacity, and this provides them with an opportunity to offset a portion of their transportation costs. The Commission stated that it is not unreasonable to require shippers to compete with the pipeline for the sale of released capacity. In addition, the Commission stated that releasing customers have some competitive advantages over the pipelines in the capacity release market. Thus, the Commission explained that flexible point rights and the ability to segment capacity enhance their ability to compete in the secondary market, and that shippers have an additional advantage in the secondary market because the capacity that is being released by the shippers is firm capacity, while the pipeline may be limited to selling service on an interruptible basis because it has already sold the capacity to the releasing shipper on a firm basis. Northern Municipals and IMGA seek rehearing of the Commission's ruling on this issue.

68. Northern Municipals state that capacity release is based on a fundamentally different concept than the selective discounting policy. They assert that the capacity release program is intended to enable firm customers of pipelines to sell any excess firm capacity and thereby recoup some of the costs associated with holding that firm entitlement. Order No. 637 was also intended to benefit captive customers, Northern Municipals argue, by reducing their revenue responsibility through a combination of increased capacity release revenues, revenue credits, reduced discount adjustments, and lower long-term rates on pipelines instituting peak/off peak or term differentiated rates. On the other hand, Northern Municipals state, the selective discount policy is premised on the belief that discounting increases throughput on the overall national grid to the benefit of captive customers. Northern Municipals argue that allowing pipelines to use selective discounting to compete with their own firm capacity holders is at odds with the general goals of the capacity release program, as well as the goals of Order No. 637.

69. Northern Municipals are correct that the selective discount policy and the capacity release programs are based on fundamentally different concepts. The Commission discussed the differences in the development of these policies in the NOI in this proceeding [60] as well as in its order in *Williston Basin Interstate Pipeline Co.*[61] As the Commission explained, the selective discount policy was adopted as part of Order No. 436 and is based on a monopolistic model, while the capacity release program was adopted in Order No. 636, where the Commission began to move away from the monopolistic selective discount model to a more competitive model, especially for the secondary market. In Order No. 636, the Commission adopted significant changes to the structure of the services provided by natural gas pipelines in order to foster greater competition in the natural gas markets.

70. One of these changes was the adoption of the capacity release program. As Northern Municipals state, one of the purposes of the capacity release program was to enable customers to sell their unused capacity in the secondary market and thus mitigate the shift to the SFV rate design.

[60] *See* NOI at P 2–6.

[61] 107 FERC ¶ 61,229 at P 3–9 (2004).

However, this was not the only or the primary purpose of the capacity release program. As the Commission explained in Order No. 636–A, the capacity release mechanism is intended to create a robust secondary market where the pipeline's direct sale of its capacity must compete with its firm shippers' offers to release their capacity. The Commission stated that this competition would help ensure that customers pay only the competitive price for the available capacity.[62] In upholding the capacity release program in *UDC* v. *FERC*,[63] the court recognized that capacity release is intended to develop an active secondary market with holders of unutilized firm capacity rights reselling those rights in competition with capacity offered directly by the pipeline.

71. The issue therefore is how best to accommodate the policies behind selective discounting and capacity release. The Commission believes that the May 31 Order strikes the appropriate balance. Northern Municipals and IMGA would have the Commission focus only on the goal of allowing captive customers to recoup some of their transportation costs. But, the capacity release program, as upheld by the court in *UDC* v. *FERC,* was also intended to create a robust competitive secondary market. It was not the intent of the Commission to allow customers to release capacity without competition between the customers and the pipelines, and it was entirely reasonable for the Commission to require customers to compete with the pipelines in these circumstances. The Commission always intended that customers would be required to compete with pipelines for the sale of this capacity and to protect customers from this competition would negate an equally important part of the capacity release policy.

72. The Commission must adopt policies of general application that promote the Commission's goals in the national gas market. Competition in the secondary market benefits all users of the system. Reduction of incentives for pipelines to offer discounts would reduce competition. The public interest is best served when the Commission's policies promote competition and market efficiency to the maximum practical extent. The Commission's policies on capacity release and pipeline discount adjustments act together to maximize competition and economic efficiency, resulting in lower delivered energy prices for consumers in aggregate. Denying pipelines a discount adjustment for capacity sold below the maximum rate in competition its customers would inhibit the competitive market that capacity release has created.

73. Further, Northern Municipals argue that the Commission has not demonstrated how the goal of increasing throughput on the national grid and, thus, spreading fixed costs over more units of service, is furthered by allowing discount adjustments for capacity sold by an interstate pipeline in competition with released capacity. In these circumstances, Northern Municipals argue, the pipeline is merely competing to resell the same capacity that has already been sold to the releasing shipper as firm capacity. Northern Municipals state that the fixed costs associated with this capacity have already been paid, and, therefore the charge paid for this capacity will not add to the recovery of fixed costs. Further, Northern Municipals argue, the impact on throughput will be the same whether the pipeline sells this capacity or the releasing shipper sells this capacity.

74. Northern Municipals' argument misunderstands how increased throughput on the pipeline impacts the reservation charges of firm customers. Increased capacity sold by the pipeline, in competition with capacity release or otherwise, will not impact the *current* reservation charges paid by firm customers, but will reduce those charges *in the next rate case*. In a rate case, rates are determined by dividing the revenue requirement by the units of throughput. The higher the throughput, the lower the rates and, thus, if the pipeline's throughput during the rate case test period is increased due to discounting the reservation charges in the next rate case will be lower than they would have been without the increased throughput. If firm shippers release capacity in competition with the pipeline and a replacement shipper buys the capacity from the shipper instead of the pipeline, then there will be no increase in the pipeline's throughput from that transaction to reduce rates in the next proceeding. But, the releasing shipper has instead received an immediate and direct benefit by making the sale of capacity and thereby recovered some of its reservation charges. When the Commission implemented Order No. 636, it recognized that competition from capacity release would reduce the amount of interruptible transportation service the pipelines would be able to sell. Therefore, in the Order No. 636 restructuring proceedings of individual pipelines, the Commission permitted the pipelines to reduce their allocation of costs to interruptible service. However, the Commission determined then, and reaffirms now, that enabling firm shippers to release their capacity when they are not using it and immediately recover some of their reservation charges provides a greater benefit that more than offsets the cost of any reduced allocation of fixed costs to interruptible service.

75. In addition, Northern Municipals dispute the Commission's conclusion that the releasing shipper has a competitive advantage over the pipeline and states that circumstances on Northern give it some advantages over the releasing shipper. First, Northern Municipals state, Northern offers a daily firm service which may be more attractive to shippers than released capacity. Further, Northern Municipals assert, Northern has a competitive advantage over releasing shippers in terms of price because during the summer months there is excess capacity on Northern and the price for this capacity is very low. In addition, Northern Municipals assert, Northern may enter into contracts that exempt shippers from surcharges, giving Northern a price advantage over a releasing firm shipper that is subject to these charges. Northern Municipals state that Northern can undercut the releasing shipper by this amount without absorbing any costs, and then turn around and propose a selective discount adjustment that raises the rates of the shipper against whom Northern was competing to sell the capacity. Northern Municipals state that these advantages are not the result of a competitive market, but are instead the result of Northern's ability to use its monopoly power to manipulate rates in a manner that maximizes its revenues, contrary to the fundamental notion that interstate pipelines should not be permitted to use their market power to the detriment of their customers.[64]

76. Nothing in Northern Municipals' argument negates the fact that Order No. 637's policies on segmentation and flexible point rights enhance a shipper's ability to compete in the secondary market. Moreover, since the shippers have contracted for guaranteed firm service for the entire term of their contracts, they can release guaranteed firm service for whatever term they do not require the service themselves. This does give them the ability to sell a high quality service in the secondary market, rather than the short-term daily firm service described by Northern

[62] See Order No. 636–A, FERC Stats. & Regs. at 30,553 and 30,556.

[63] 88 F.3d 1105, 1149 (D. C. Cir. 1996).

[64] Northern Municipals cites *UMDG* v. *FERC*, 88 F.3d 1105, 1127 (D.C.Cir. 1996).

Municipals. It may be that Northern has some advantages as well, but this has not hampered competition in the secondary market. The Commission's policies have led to an active and competitive secondary market for the sale of capacity.

77. Northern Municipals and IMGA argue that a discount adjustment for discounts given in competition with capacity release amounts to a subsidy and that therefore captive and other firm shippers are required to subsidize the very discounts that kept them from selling their excess capacity. IMGA argues that the Commission's citation to AGD I[65] as justification for the discount adjustment is inapposite because the Commission's current discount policy with the discount adjustment was not before the court and thus any statement regarding the discount adjustment was dicta.[66] Moreover, IMGA asserts, *AGD I* also made clear that the ''opportunity to recover costs does not guarantee that those costs are recoverable in the face of competition.'' [67] Thus, IMGA states, if captive customers' rates are increased to offset the loss the pipeline would otherwise incur in discounting in competition with capacity release, those discounts are subsidized, and, unless there is evidence that captive customers benefit from the subsidy, it is unlawful.

78. Contrary to the suggestion of IMGA and Northern Municipals the discount adjustment is not a subsidy. Pipelines are not, as IMGA and Northern Municipals suggest, reimbursed for the discount by the captive customers through the discount adjustment and the discount adjustment should not raise the rates of captive shippers. As explained above, in a rate case, the rates going forward are determined by dividing the pipeline's projected costs by its projected future throughput on the volumes transported during the rate case test period. If some of the test period volumes were transported at a discount, the discount adjustment recognizes that these volumes were transported at less than the maximum rate. Therefore the units of throughput for ratemaking purposes are reduced to reflect the discounting.

79. To the extent that a discount adjustment for discounts given to interruptible customers in competition with firm customer capacity release results in a higher allocation of costs to firm services, as opposed to interruptible services, that allocation appropriately recognizes that firm service with the right to release capacity in competition with the pipeline and the right to segment and use flexible point rights is a higher quality service with substantial rights.

80. Further, while it is true that the discount adjustment was not before the court in *AGD I*, the court clearly indicated its concern that the absence of a discount adjustment would be a ''dubious'' practice that could result in denying the pipelines and opportunity to recover their costs. It was not error for the Commission to respond to the court's concern in further developing its discount policy.

81. Of course, if there were no discount adjustment and all of the discounted volumes were included in the test period throughput as though they had been transported at the maximum rate, the rate derived using those volumes would be lower than the rates that would be derived using the discount adjustment. But, if the Commission required pipelines to include the full amount of all volumes transported at a discount, then, as the court pointed out in *AGD I*, the pipeline would be in jeopardy of not having an opportunity to recover its cost of service. This would discourage discounting. In these circumstances, it is likely that the pipeline would not have transported the volumes at the discounted rate and the throughput in the next rate case would be lower than if the volumes had been transported at a discount.

82. Further, IMGA argues that discounting in competition with capacity release does not benefit captive customers and therefore the policy cannot be continued. First, IMGA states, small captive customers on one-part rate schedules are not permitted to release capacity and, second, even if a captive customer benefits from capacity release, that does not mean that it benefits from discounting in competition with capacity release.

83. Again, IMGA's focus is too narrow. The Commission recognizes its obligation to protect captive customers from the monopoly power of the pipelines, but the Commission has other obligations as well and must balance a number of interests in developing its policies. Captive customers might be better off if they were able to sell their capacity in the capacity release market without competition from the pipelines, but this would defeat the Commission's purpose in adopting the capacity release program to develop a robust competitive secondary market for capacity. It is not unreasonable for the Commission to require firm shippers to compete with pipelines for the sale of capacity in the secondary market.

84. As the Commission explained in Order No. 636–B,[68] because customers paying a one-part[69] rate do not pay a reservation charge to reserve capacity, they cannot release that capacity. However, the Commission also stated that the pipeline should develop procedures that would enable customers served under one-part rate schedule to convert to a two-part rate schedule if they choose to convert in order to release capacity. Presumably, IMGA's one-part rate shippers could convert to a two-part rate schedule if they choose to take advantage of the benefits of capacity release. The one-part volumetric rate with an imputed load factor paid by small customers is a subsidized rate that provides them with a lower rate than they would pay if they paid the rate applicable to larger shippers. The choice is for the small shipper to decide if it prefers the benefits of its lower one-part rate to the benefits of capacity release.

3. Competition From Intrastate Pipelines

85. In the May 31 Order, the Commission stated that competition from intrastate pipelines is not subject to the Commission's jurisdiction and the Commission therefore has no ability to discourage intrastate pipelines from offering discounts in competition with interstate pipelines. Therefore, the Commission stated that interstate pipeline discounts to avoid loss of throughput to non-jurisdictional intrastate pipelines do benefit captive customers of the interstate pipelines. The Commission stated that the commenters opposing the discount adjustment seemed to recognize this and therefore focused their comments on competition from interstate pipelines and capacity release.

86. On rehearing, Northern Municipals argue that the Commission has provided no support for its statement that customers benefit from discounts given to avoid loss of throughput to intrastate pipelines. Northern Municipals assert that the analysis of whether a discount given to meet competition from an intrastate pipeline is no different from the

[65] *A GD I* at 1012.

[66] IMGA states that the D.C. Circuit made this clear in *Mississippi Valley Gas Co.* v. *FERC*, 68 F.3d 503, 506–07 (D.C. Cir. 1995); *Transcontinental Gas Pipe Line Corp.* v. *FERC*, 998 F.2d 1313, 1318, 1321 (D.C. Cir. 1993); *Columbia Gas Transmission Corp.* v. *FERC*, 848 F2d 250, 251–254 (D.C. Cir. 1988).

[67] IMGA cites *AGD I* at 1001.

[68] Order No. 636–B, 61 FERC ¶ 61,272 at 61,998 (1992).

[69] As the Commission explained in the May 31 Order, small captive customers pay one-part volumetric rates on many pipelines. Small shippers paying these one-part rates do not pay a reservation charge to reserve capacity and their rates are often developed using an imputed load factor that is higher than the customer's actual use of the system.

analysis that should apply to a discount given to meet competition from an interstate pipeline, *i.e.*, does the discount that shippers are being asked to bear outweigh any benefits from retaining the load in question. Northern Municipals assert that competition from an intrastate pipeline will almost always involve competition from another interstate pipeline and that they believe that the majority of intrastate pipelines are not built to allow a shipper to directly access a production area, but instead are built to provide access to another interstate pipeline. Thus, they argue, the analysis is not different than if a shipper went directly to the competing interstate pipeline.

87. Northern Municipals give as an example the discount given by Northern to CenterPoint. Northern Municipals state that the discount granted to CenterPoint was for capacity that CenterPoint already had under contract and therefore no increase in throughput would result from the CenterPoint deal either on Northern or on the interstate grid. Northern Municipals state that the competition in this case was from an intrastate pipeline and that CenterPoint's competitive alternative was to build or have built an intrastate pipeline to access another interstate pipeline, not to access directly the production area. Northern Municipals further state that while the Commission has assured Northern Municipals that it can attack this discount in a future rate case, the Commission's statement that discounts given to meet competition from intrastate pipelines do benefit captive customers of the interstate pipeline prejudges that issue.

88. Parties did not generally argue in their initial comments that discounts to meet competition from intrastate pipelines would not increase throughput on the national transportation grid, as they did with regard to discounts given to meet competition from other interstate pipelines. Therefore, the May 31 Order did not focus on this issue. The Commission lacks jurisdiction over intrastate pipelines and thus cannot discourage them from discounting through its ratemaking policies. Therefore, interstate pipelines must be allowed to compete with intrastate pipelines or throughput will be lost to the intrastate pipelines to the detriment of the interstate customers.

89. If an interstate pipeline gives a shipper a discount in order to keep that shipper on the system, the discount benefits the captive customers of the pipeline by retaining that throughput. If instead the volumes left the system to be transported on an intrastate pipeline, the overall volume on the interstate system would be lower as a result. If the volumes were retained on the interstate pipeline rather than moving via an intrastate pipeline to another interstate pipeline, the issues would be similar to those discussed above with regard to competition between interstate pipelines. As the Commission has concluded above, competition between interstate pipelines can increase throughput on the interstate grid and can produce additional benefits to users of the system. Thus, the Commission has concluded that in either case a discount to gain or retain throughput may be appropriate if the pipeline is able to show that the discount was necessary to meet competition.

90. In any event, the issue of whether the discount given to CenterPoint should receive a discount adjustment under the Commission's policy can be addressed in the rate case where Northern seeks a discount adjustment. Northern Municipals raised issues concerning the CenterPoint discount when Northern filed its service agreement with CenterPoint for the Commission to approve various material deviations in the service agreement. As the Commission's March 23, 2005 [70] and June 8, 2005 [71] Orders in that proceeding made clear, the Commission has made no determination as to whether Northern will be able to obtain a discount adjustment in its next rate case for the discount given to CenterPoint, and neither does anything in this order prejudge that issue. Similarly, as the Commission explained in the November 1, 2005 Order in *Northern Natural Gas Co.*,[72] the issue of whether Northern will be permitted to adjust its rate design volumes in its next rate case to reflect discounts given to another Northern customer (Metropolitan Utilities District) will be decided in that next rate case. The issue of whether any other equitable relief would be appropriate in the circumstances of these discounts can also be addressed in the next rate case.

91. Thus, as a general rule, a discount granted by an interstate pipeline to meet competition from an intrastate pipeline will result in greater throughput on the interstate system than without such a discount to the benefit of all customers. If there are special circumstances that the Commission should consider, it can do so in an individual rate case.

[70] *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 at P 32 (2005).

[71] *Northern Natural Gas Co.*, 111 FERC ¶ 61,379 at P 8 (2005).

[72] 113 FERC ¶ 61,119 (2005).

E. The Discount Adjustment for Discounts Given on Expansion Capacity

92. In the May 31 Order, the Commission found there was no reason to create an exemption from the selective discounting policy for expansion projects. The Commission explained that new construction is no longer undertaken solely for the purpose of serving new markets, but also to provide natural gas customers with competitive alternatives to existing service. The Commission stated that, as a result of recent expansions, there are fewer captive customers,[73] and policies that encourage these expansions will provide more options to customers that are currently captive and thus enable them to benefit from the competitive markets. However, the Commission also clarified that in receiving approval for the expansion project, the pipeline must meet the criteria set forth in the *Certificate Pricing Policy Statement*,[74] and if the expansion does not benefit current customers, the services must be incrementally priced. The Commission would not approve a discount adjustment in circumstances that would shift the costs of an expansion to existing customers that did not benefit from the expansion because this would be contrary to the Commission's policy. IMGA and Northern Municipals seek rehearing of this ruling.

93. On rehearing Northern Municipals argue that the Commission failed to address the issue of how new construction can be a true competitive alternative if, in the absence of discounting, it is a higher priced alternative. Northern Municipals state that in a competitive market, the correct result is that the construction will not be undertaken because there is lower-priced capacity already available. Northern Municipals state that a competitive market is not one in which one alternative is artificially priced lower than its cost by forcing other shippers, not interested in the construction, to subsidize that construction so that it can compete with other, lower-priced service.

94. Northern Municipals state that there is no evidentiary support for the Commission's statement that as a result of expansions, there are fewer captive

[73] INGAA states that since the implementation of the Order No. 636, substantial new capacity has been built, leading to more gas-on-gas competition and thus fewer captive customers. INGAA states that the 36 pipeline companies that responded to a 2005 INGAA survey reported that they spent $19.6 billion for interstate pipeline infrastructure between 1993 and 2004.

[74] 88 FERC ¶ 61,277 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on further clarification*, 92 FERC ¶ 61,094 (2000).

customers. But, they argue, even if this were true, there is still no justification for asking existing customers of a pipeline to subsidize a discount adjustment for a construction project for capacity that is not competitively priced.

95. Northern Municipals and IMGA argue that discount adjustments are contrary to the Commission's policy on expansion capacity because they distort accurate price signals. They quote the *Certificate Pricing Policy Statement* that rolled in pricing sends the wrong price signals by masking the costs of the expansion, and asserts that discounting has the same effect. Northern Municipals acknowledge the Commission's statement in the May 31 Order that it would not approve a discount adjustment in circumstances that would shift costs to customers that did not benefit from the expansion, but argues that the Commission then contradicts itself by stating that allowing an adjustment for discounts in a rate case does not amount to rolled-in pricing. Northern Municipals argue that if the rates are required to be incrementally priced under the Commission's existing policy, then an adjustment in a base rate case for discounts does constitute recovery of costs from existing shippers that do not benefit from the expansion.

96. In addressing the issue of the application of the selective discounting policy to new pipelines, there is a distinction between an entirely new pipeline and an expansion of an existing pipeline. An entirely new pipeline should have the same policies applied to it with regard to discounting as an existing pipeline. Discount adjustments only affect the allocation of the costs of the pipeline that gave the discount among its own customers. Thus, the ability of a new pipeline to seek a discount adjustment in designing its own rates will not adversely affect customers of other pipelines. Shippers who are original customers on the new pipeline can negotiate risk-sharing arrangements with that pipeline before deciding to participate in the project. These original shippers are not captive customers in the same sense as captive customers on existing pipelines and, since they are not currently receiving service under the new pipeline, they clearly have other options. A newly constructed pipeline could be fully booked with firm transportation, but could obtain additional throughput through the sale of interruptible service at a discounted rate. In those circumstances, the pipeline should receive a discount adjustment, and there is no reason to create an exemption from the Commission's selective discounting policy for newly constructed pipelines.

97. The expansion of existing pipeline capacity is, however, a different situation. In the *Certificate Pricing Policy Statement*,[75] the Commission stated that in evaluating proposals for certificating new construction, the threshold question applicable to existing pipelines is whether the project can proceed without subsidies from their existing customers. This policy statement changed the Commission's previous policy of giving a presumption for rolled-in treatment for pipeline expansions. The Commission found that rolled-in treatment sends the wrong price signals by masking the true cost of capacity expansions to the shippers seeking the additional capacity. The Commission stated that the requirement that pipeline expansions should not be subsidized by existing customers is necessary for a finding of market need for the project. This generally means that expansions will be priced incrementally so that expansion shippers will have to pay the full cost of the project without subsidy from the existing customer through rolled-in pricing.

98. Thus, in most cases, expansion capacity is incrementally priced. The Commission clarifies that in these circumstances, there will be no discount adjustment for service on the expansion that affects the rates of the current shippers, since rates for that service will be designed incrementally.

99. However, the pricing policy did not eliminate the possibility that some or all of a project's costs could be included in determining existing shipper's rates. The Commission stated that rolled-in treatment would be appropriate when rolled-in rates lead to a rate decrease for the pre-expansion customers, for example because initial costly expansion results in cheap expansibility. In addition, rolled-in rates might be appropriate if the new facilities are necessary to improve service for existing customers. In circumstances where the rates for expansion capacity are rolled-in, a discount adjustment can be appropriate.

F. Burden of Proof

100. In the May 31 Order, the Commission explained that under its current policy, in order to obtain a discount adjustment in a rate case, the pipeline has the ultimate burden of showing that its discounts were required to meet competition. The Commission further explained that it has distinguished between the burden of proof the pipeline must meet, depending upon whether a discount was given to a non-affiliate or an affiliate. In the case of discounts to non-affiliated shippers, the Commission stated, it is a reasonable presumption that a pipeline will always seek the highest possible rate from such shippers, since it is in the pipeline's own economic interest to do so. Therefore, the Commission stated, once the pipeline has explained generally that it gives discounts to non-affiliates to meet competition, parties opposing the discount adjustment have the burden to raise a reasonable question concerning whether competition required the discounts given in particular non-affiliate transactions. Once the party opposing the discount adjustment raises a reasonable question about the circumstances of the discount, then the burden shifts back to the pipeline to show that the questioned discounts were in fact required by competition.

101. The May 31 Order found that this allocation of the burden of proof is based on accurate assumptions and produces a just and reasonable result. The Commission stated that in view of the reasonableness and accuracy of the presumption that pipelines will seek the highest rate from non-affiliated shippers, requiring the pipeline to substantiate the necessity for all unaffiliated discounts would be unduly burdensome and would discourage a pipeline from discounting. IMGA and Northern Municipals seek rehearing of this ruling.

102. Northern Municipals assert that the burden of proof is heavily tilted in favor of the pipeline because the burden is on the opposing party, who was not privy to the original negotiations, to discover all of the details relevant to the discounts at issue, while the pipeline, who knows the most about the transaction, need do nothing at the outset to prove that the discount was necessary. Further, Northern Municipals assert, the rate case in which the discount adjustment is at issue often occurs well after the discount is made and thus, the opposing party's attempts to prove that the discounts were not necessary are invariably met with charges that they are using 'twenty-twenty' hindsight to challenge the discounts. Northern Municipals state that an additional problem with the burden of proof is that in rate cases, pipelines argue that they have the right to file the last round of testimony, giving the pipeline the final opportunity to present its real justification for the

[75] 88 FERC ¶ 61,277 (1999), *order on clarification,* 90 FERC ¶ 61,128 (2000), *order on further clarification,* 92 FERC ¶ 61,094 (2000).

discount, and there will be no opportunity for the shippers to rebut this testimony.

103. Northern Municipals argue that pipelines should be required to demonstrate, through the filing of substantial evidence in their initial cases, that the benefits to captive customers that they and the Commission assume exist, actually do exist. Thus, Northern Municipals state, pipelines would have to compare the base rates that would have existed had the discounts not been granted to the base rates that would have existed if the discounts had been granted and a discount adjustment included in the computation of base rates. They argue that this proposal would not discourage discounts, as the Commission has suggested, if the discount met the test of providing some quantifiable benefit to captive and other customers, but would only discourage discounts that do not comport with the Commission's stated rationale for its selective discount policy.

104. Northern Municipals overstate the burden placed upon parties challenging a discount adjustment. Contrary to the assertions of Northern Municipals, the burden placed upon the opponents of the discount adjustment is not an unduly heavy burden. All the challenger of a discount adjustment must do, after the pipeline has explained generally the basis for its discounts, is produce some evidence that raises a reasonable question concerning whether the discount was required to meet competition.[76] Thus, Northern Municipals' concern that, in a rate case, ''the opposing party's attempts to prove that the discounts were not necessary are invariably met with charges that they are using 'twenty-twenty' hindsight to challenge the discounts'' is unfounded. Contrary to Northern Municipals assertion, the opponent of the discount is not required to prove that the discount was not given to meet competition, but merely has to raise a reasonable question as to the validity of the discount and the pipeline is required to show that it was made to meet competition. Further, the relevant inquiry is whether at the time the discount was given it was necessary to meet competition and this inquiry would not be dismissed as hindsight.

105. It is not an undue burden to ask the parties opposing the discount adjustment to introduce some evidence that raises a question about the need for the discount. In a rate case where the discount adjustment is challenged, all parties have an opportunity to seek discovery of all the facts surrounding each discount. Thus, discovery will provide the parties with the information necessary to determine whether a challenge to a discount adjustment is appropriate and the ultimate burden of proof on the issue will be on the pipeline. In this regard, if a pipeline is unable in response to a discovery request to explain why competition required a particular discount, the Commission would regard that fact alone to raise a sufficient question concerning whether the discount was required to meet competition to shift the burden to the pipeline to justify the discount. Thus, pipelines must keep information relevant to each discount because if they are unable to explain and justify each discount, they will not be able to meet their burden of proof. Parties may also challenge in the rate case the level of discounts given and the pipeline must be able to substantiate that the discount was not lower than what was necessary to meet competition and obtain the additional throughput. Further, Northern Municipals' concern that shippers could be denied an opportunity at a hearing to rebut the pipelines case is unfounded and Northern Municipals cite no case where this has occurred. The pipeline must present evidence showing that the discount was required by competition and the opponents of the discount have an opportunity to challenge that evidence.

106. Finally, Northern Municipals argue that the Commission should review its records and information submitted by the pipelines to determine whether pipelines are successful in recovering discounts from their remaining customers all or a majority of the time. If so, Northern Municipals argue, then the basis of the policy, *i.e.*, that pipelines will always seek the highest rate because it is in its own economic interests to do so, must be reexamined. Northern Municipals argue that if pipelines are routinely permitted to recover these discounts through rates, then they do not need to seek the highest possible rate and can agree to virtually any discount from maximum rates because their economic interests are fully protected through their ability to have their other customers subsidize their discounts. Similarly, IMGA states that the discount adjustment does not motivate the pipeline to obtain the highest rate possible for the service, but instead motivates the pipeline to grant the discount without knowing whether it is necessary to meet competition because the throughput adjustment insulates it from the risk of its own imprudence.

107. The Commission does not require the pipeline to initially present detailed evidence to substantiate that each discount was granted to meet competition because it assumes that, in the case of a discount to a non-affiliate, the pipeline will always seek the highest rate for its services because it is in its own best economic interests to do so. The Commission can make assumptions about rational business behavior and a pipeline, like any other business, can be presumed to act in its own economic best interests. Contrary to the parties' assertions here, the discount adjustment does not negate that assumption. There is no rational reason for a pipeline company to sell capacity at less that the highest rate it can charge. It would not be a good business practice for a pipeline to turn down the opportunity to put money in its pocket today through a higher rate in order to take a chance that the Commission will allow a discount adjustment in a future rate case.[77] There is no guarantee that the Commission will approve a discount adjustment and the Commission has denied pipelines this rate treatment when it has not been shown that the discounts were required by competition.[78]

108. Moreover, the discount adjustment simply allows pipelines to project future throughput based on the volumes transported during the test period for the rate case and recognizes that some of these volumes may have been transported at a discount in order to meet competition. If the projection of future volumes based on the test period discounts is accurate, the pipeline will recover its cost of service. However, if competitive circumstances change, and in the future the pipeline is required to discount below the level of the discounts during the test period, the pipeline is at risk of undercollecting its cost of service until its next rate case. On the other hand, if the pipeline can transport volumes at a rate higher than the discounted rate during the test period, it will retain that money until the next rate case. Thus, the pipeline always has an incentive to collect the highest possible rate for its service and it makes no business sense for a pipeline to discount unnecessarily. It is therefore reasonable for the Commission to make this assumption in allocating

[76] *See, e.g., Northern Natural Gas Co.,* 111 FERC ¶ 61,379 at P 18 (2005).

[77] *See, e.g., Columbia Gas Transmission Corp.*, 848 F.2d 250, 251–54 (1985) (pipeline will seek the highest possible rate).

[78] *See, e.g., Iroquois Gas Transmission System,* 84 FERC ¶ 61,086 at 61,476–78 (1998), *reh'g denied,* 86 FERC ¶ 61,261 (1999); *Trunkline Gas Co.,* 90 FERC ¶ 61,017 at 61,092–95 (2000).

the burden of proof on this issue. As explained above, parties opposing the discount may address at the hearing, not only the issue of whether a discount was given to meet competition, but also of whether something less than the full discount is appropriate in the circumstances. The requests for rehearing are denied.

G. Protections for Captive Customers

109. In the May 31 Order, the Commission stated that opposition to the discount policy comes from a group of publicly-owned municipal gas companies that represent a small percentage of throughput on the national system, and that it is possible to adopt measures to protect these customers in individual cases where the Commission's policy works an undue hardship on them and at the same time retain the benefits of the policy for the majority of shippers. Northern Municipals and IMGA seek rehearing of this ruling.

110. These parties assert that the discount policy is opposed not only by publicly-owned municipal gas companies, but also that it is opposed at least in part by OAL, Arizona Electric Power Cooperative, Inc., the Missouri Public Service Commission, Calpine Corp., CenterPoint Energy Resources, the Northwest Industrial Gas Users, and seven members of Northern Municipals that are small-investor-owned LDCs.[79] Moreover, Northern Municipals argue, the issues raised here do not turn on whether those commenting represent a large or a small percentage of throughput. Instead, Northern Municipals assert, the relevant inquiry is whether the goals of the selective discounting policy are adequately supported by the facts and the law. Northern Municipals argue, while it may be true that the Commission can take case-specific actions to protect captive customers, this is not responsive to the issue of whether the goals of the selective discounting policy have been adequately supported by the facts and the law. Further, Northern Municipals take issue with the Commission's statement that there are already measures in place on pipelines that give captive customers special rates that provide them with protection. Northern Municipals state that a selective discounting policy that is premised on the conclusion that it will lead to increased throughput on the national grid, and benefit captive customers and others by spreading fixed costs cannot be justified by simply stating that some of the smallest customers on a pipeline receive volumetric rates, particularly where those rates are the result of settlements.[80]

111. There are only two parties that continue to oppose the discount policy, IMGA and Northern Municipals. The other parties mentioned by IMGA and Northern Municipals have not sought rehearing of the May 31 Order. In any event, the Commission's statement that only a small group of customers oppose the policy was not intended to suggest that an otherwise unsupportable policy would be appropriate because only a few shippers object to it. Instead, the statement was directed to a balancing of competing interests in this case. Because the discount policy is a significant and necessary part of the Commission's pro-competitive policies and because it provides benefits to many shippers, it is appropriate for the Commission to consider whether any negative impacts of the policy can be mitigated. If any negative impacts of the selective discounting policy are relatively few and isolated and can be corrected, then abandoning the overall benefits of the policy would not be warranted.

112. IMGA objects to the statement in the May 31 Order that one-part rates protect small customers and are subsidized by the larger customers. IMGA asserts that there is no evidence that all one-part rates are subsidized. IMGA argues that the one-part rate does not protect captive customers from unlawful discrimination caused by raising their rates to subsidize discounted rates.

113. One-part rates are offered by pipelines to small shippers to benefit those shippers by charging them lower rates than they otherwise would pay. Generally, one-part volumetric rates are based on an imputed load factor that does not reflect the actual projected volumes, but instead reflects a level designed to allocate some of the costs to larger customer services. For example, Natural Gas Pipeline Co. of America (Natural) explains that on its system the group of small municipal customers that do not have access to competitive alternatives from other pipelines or capacity release are served under Rate Schedule FTS–G (G Customers).[81] Natural states that these customers account for 1 percent of the total contract requirements on its system. Natural explains that these small customers have firm service, but pay only volumetric rates. Therefore, they have firm capacity reserved for them, but pay for service only when they actually use that capacity. Further, Natural explains, the G rate is derived from the corresponding large customer rate at an assumed 50 percent load factor, while the actual load factor of G Customers is approximately 10 percent. Natural states that under this rate structure, the G Customers pay only about 20 percent of what they would pay for the corresponding level of firm service under Rate Schedule FTS. In these circumstances, the one-part rates are subsidized because they do not recover all of the costs of the service. In any event, the Commission's reference to one-part rates was merely intended to show an example of a way that protections for small customers can be considered in individual cases.

114. Northern Municipals state that there is no evidence to support the Commission's statement that to the extent the discount policy furthers competition, it ''should'' encourage other pipelines to compete for the business of captive customers. Northern Municipals state that pipelines generally compete for the largest loads. Further, Northern Municipals argue that this portion of the order conflicts with the Commission's conclusion that interstate pipelines should be able to discount to compete with intrastate pipelines. Northern Municipals state that with regard to the CenterPoint discount discussed above, the competition that Northern was attempting to meet was from a new intrastate pipeline to be built. Northern Municipals state that if the pipeline had been built, it would have freed-up capacity in Northern's capacity constrained market area perhaps provided access to new or additional supply sources and increased competitive alternatives.

115. In the May 31 Order the Commission stated that as the national transportation grid becomes more competitive, there will be fewer captive customers. The Commission believes that its policies promoting competition do encourage pipelines to compete for business, including the business of captive customers, and since Order No. 636, substantial new capacity has been built.[82] In any event, as we have

[79] Community Utility Company, Great Plains Natural Gas Company, Northwest Natural Gas Co., Sheehan's Gas Company, Inc., Midwest Natural Gas, Inc., Superior Water Light & Power, and St. Croix Valley Natural Gas, Wisconsin.

[80] Moreover, Northern Municipals assert, while 45 of its members are eligible for volumetric rates, all its members purchase service under Northern's two-part rate schedule, and therefore pay reservation charges that are impacted by discount adjustments.

[81] See Comments of Natural Gas Pipeline Company of America at 14–15.

[82] As stated above, in response to a 2005 INGAA survey, 36 pipelines reported that they had spent

Continued

explained above, issues concerning Northern's discount to CenterPoint can be considered in Northern's next rate case.

116. IMGA further states that while the Commission stated that it would consider the impact of discount adjustments in specific proceedings, IMGA and other captive customers have been paying higher rates than necessary and lawful because of the Commission's discount policy for the past 16 years and absent Commission action now, will continue to pay those unlawful rates. Contrary to this assertion, the current rates being paid by IMGA are lawful rates that have been found just and reasonable under section 4 of the NGA.

H. Periodic Rate Cases

117. The May 31 Order found that selective discounting does not provide a basis for requiring pipelines to file periodic rate cases. The Commission explained that, unlike the circumstances under the Commission's Purchased Gas Adjustment (PGA) clause regulations there is no adjustment mechanism that permits a pipeline to change its rates and pass additional costs through to customers between rate cases. The Commission found that in these circumstances, the procedures under sections 4 and 5 of the NGA provide sufficient protections to the pipeline's customers.

118. On rehearing, Northern Municipals argue that if a pipeline increases throughput through discounting, any resulting benefits will not accrue to captive customers until the throughput on which rates are based is adjusted in a rate case to reflect the increase. Further, Northern Municipals state that without a requirement for periodic section 4 rate filings, pipelines have the ability to manipulate the timing of their filings to maximize revenue. Northern Municipals also assert that current system rates most likely already include discount adjustments and that, to the extent that those adjustments were based on discounts that no longer accurately reflect the current level of discounting, they may or may not achieve the purposes of the selective discounting policy.

119. Further, Northern Municipals state complaint proceedings are not a solution because they are time consuming and expensive, the party filing the complaint will not have access to the information needed to file the complaint in the first place, and relief is prospective only. Northern Municipals state that in their initial comments, they asked the Commission to ask Congress to amend section 5 of the NGA to provide for refunds. Northern Municipals state that the May 31 Order does not address these shortcomings of section 5 and argues that the Commission must fully address these issues before concluding that section 5 provides sufficient protection to consumers.

120. Under section 4 of the NGA, the Commission is required to ensure that rate changes proposed by the pipeline are just and reasonable, and under section 5, if the Commission finds that the existing rate is unjust or unreasonable, it must establish the just and reasonable rate for the future. This is the statutory scheme under the NGA and it gives the Commission sufficient authority to ensure that pipeline rates are just and reasonable. A requirement that pipelines file periodic rate cases is not part of the statutory scheme, and the Commission's authority to require such filings is limited.[83] As the Commission stated in the May 31 Order, under this statutory scheme, the decision to file a rate case is always that of the pipeline and it may choose to file a rate at a time that it is advantageous for it to do so. The ''shortcomings'' Northern Municipals perceives in section 5 as a remedy are part of the statutory scheme. The fact that under section 5 the burden of proof is on the complainant and that relief is prospective only does not give the Commission authority to order periodic rate filings under section 4.

121. Northern Municipals argue that periodic rate filings should be required because there are similarities between the discount policy and the PGA. Northern Municipals state that the fundamental premise behind the periodic rate filing required under the PGA regulations was that, in exchange for the ability to change only one cost element, pipelines agreed to a re-examination of all their costs and rates at three-year intervals to assure that the gas cost increases were not offset by decreases in other costs. Northern Municipals state that, similarly, the premise of selective discounting is that captive customers will benefit from subsidizing discounts because there will be an increase in fixed costs spreading. But, they argue, if the discounts are not reviewed periodically, any alleged benefits may not be realized. Northern Municipals assert that this is no different in principle from saying that the pipeline under a PGA clause must examine all costs at regular intervals to assure that the gas cost increases were not offset by decreases in other costs.

122. The Commission affirms its conclusion that similarities between the PGA mechanism and the discount adjustment mechanism do not justify a periodic rate filing requirement. Under the PGA mechanism, pipelines were able to pass projected changes in their gas costs through to customers between rate cases. Thus, the rates adjudicated just and reasonable in a section 4 rate case would change prior to the next rate case to reflect increased gas costs. In exchange for this ability to increase their rates between rate cases, the pipelines agreed to a reexamination of all of their rates at three-year intervals. This is not analogous to the discount adjustment permitted in the pipeline's next rate case to reflect that not all test-period throughput volumes were transported at the maximum rate. There is no mechanism under the selective discount policy that permits shippers' rates to change between rate cases. The rates of other shippers on the system remain at the level determined to be just and reasonable in the pipeline's last section 4 rate case and are not affected until the next rate case is filed. In these circumstances a requirement that pipelines file periodic rate cases is not justified.

I. Informational Posting Requirements

123. In the May 31 Order, the Commission concluded that its current informational posting requirements provide shippers with the price transparency needed to make informed decisions and to monitor transactions for undue discrimination and preference.[84] Therefore, the Commission stated that it would not change its informational posting requirements at this time. The Commission further stated that it will refer allegations of non-compliance with the Commission's posting and reporting requirements to the Office of Market Oversight and Investigation for a potential audit and that, as part of the Commission's ongoing market

$19.6 billion for interstate pipeline infrastructure between 1993 and 2004, and during the 1990s interregional natural gas pipeline capacity grew by 27 percent.

[83] *New York State Public Service Commission* v. *FERC,* 866 F.2d 487 (D.C. Cir.1989) (requiring periodic filings under NGA section 4 beyond the Commission's statutory authority).

[84] Under section 284.13(b), pipelines are required to post on their Web site information concerning any discounted transactions, including the name of the shipper, the maximum rate, the rate actually charged, the volumes, receipt and delivery points, the duration of the contract, and information on any affiliation between the shipper and the pipeline. Further, section 358.5(d) of the regulations requires pipelines to post on their Web site any offer of a discount at the conclusion of negotiations contemporaneous with the time the offer is contractually binding.

monitoring program, the Commission will continue to conduct audits on its own.

124. Northern Municipals argue that the Commission erred in refusing to amend its regulations to require pipelines to post the reasons for each selective discount granted and the benefits of the discount to captive customers. They state that if customers want to oppose a discount, they must know the reason for it. Northern Municipals state that attempting to analyze a pipeline's reasons for granting the discount in a later-filed rate case raises additional issues, including whether after-the-fact justification should be permitted and whether it is more difficult for the captive customers to eliminate discount adjustments for discounts that have already been provided to favored customers.

125. As explained in the May 31 Order, under section 284.13(b) of the Commission's regulations, pipelines are required to post on their Web site information concerning any discounted transactions, including the name of the shipper, the maximum rate, the rate actually charged, the volumes, receipt and delivery points, the duration of the contract, and information on any affiliation between the shipper and the pipeline. Further, section 358.5(d) of the regulations requires pipelines to post on their Web site any offer of a discount at the conclusion of negotiations contemporaneous with the time the offer is contractually binding. This information provides shippers and the Commission with the price transparency needed to make informed decisions and to monitor transactions for undue discrimination and preference. As the court stated in AGD I,[85] ''the reporting system will enable the Commission to monitor behavior and to act promptly when it or another party detects behavior arguably falling under the bans of sections 4 and 5.''

126. In determining whether a discount adjustment is appropriate in a rate case, the Commission determines whether the discount was required by competition at the time it was given. Thus, the competitive circumstances at the time of the discount are relevant and an ''after-the-fact'' justification that does not meet that standard would not support a discount adjustment. Nor would it be more difficult under this standard to ''eliminate discount adjustments for discounts that have already been provided to favored customers.'' Therefore, the request for rehearing is denied. The Commission will not change its informational posting requirements at this time.

J. Proceeding To Investigate New Cost Allocation Methodologies

127. Northern Municipals state that in the NOI the Commission requested comments on what alternative changes in the Commission's policy could be considered to minimize any adverse effects on captive customers. Northern Municipals state that in response, it requested that the Commission institute proceedings to investigate a new cost allocation methodology that would more fairly allocate the costs of the pipeline system in proportion to the benefits a shipper derives from the system. Northern Municipals state that the Commission erred in not addressing this issue and asks the Commission address its alternative proposal on rehearing.

128. Northern Municipals ask the Commission to consider and investigate a new approach to pipeline regulation that would mandate structural separation of the pipeline networks from their parent corporations and affiliates. Under Northern Municipals' proposal, the pipeline network would be independently financed, would have its own board of directors, and would have common carrier status. Further, Northern Municipals state that the Commission should utilize a cost allocation methodology that assigns the costs of the interstate pipeline network to customers in direct proportion to the benefits that they derive from the use of the network. Northern Municipals also ask the Commission to consider implementing an independent system operator (ISO) similar to that in the electric industry.

129. In the NOI, the Commission sought comments on what alternative changes in the Commission's discount adjustment policy could be considered to minimize any adverse effect on captive customers. The issues raised by Northern Municipals are beyond the scope of this proceeding [86] and the Commission will not address them here.

The Commission orders: The requests for rehearing are denied.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Magalie R. Salas,

Secretary.

Kelly, Commissioner, *dissenting in part:*

As I stated in the underlying order in this proceeding,[1] I would have supported a requirement for pipelines to post on their Web sites the reasons for providing a selective discount to a particular shipper. Therefore, I respectfully dissent in part on this order.

Suedeen G. Kelly

[FR Doc. 05–23140 Filed 11–22–05; 8:45 am]

BILLING CODE 6717–01–P

[85] 824 F.2d at 1009.

[86] Some of the proposals also appear to be beyond the scope of the Commission's authority to implement.

[1] *Policy for Selective Discounting By Natural Gas Pipelines,* 111 FERC§ 61,309 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0011; FRL–8000–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal), EPA ICR Number 1745.05, OMB Control Number 2050–0154

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0011, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 5303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Municipal and Industrial Solid Waste Division of the Office of

Solid Waste, Mail Code 5306W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9037; fax number: 703–308–8686; e-mail address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 21, 2005 (70 FR 42061), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0011, which is available for public viewing at the Office of Solid Waste and Emergency Response (OSWER) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices (Renewal).

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 257, subpart B on a State level, owners/operators of construction and demolition waste landfills that receive conditionally exempt small quantity generator hazardous wastes will have to comply with the final reporting and recordkeeping requirements. 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR part 257, subpart B.

The information consists of facility operating records about any Location Restrictions such as Floodplains or Wetlands as specified in Sections 257.8–257.9. In some cases waste disposal units may demonstrate that there is no potential for migration of hazardous constituents from the unit. Where the facility is small, arid, or remote, it may use alternative techniques such as placing documentation in the operating record to show that it has met the criteria.

In cases where there is no such exemption, affected facilities will establish Ground-Water Monitoring Systems, Detection Monitoring Programs, and Assessment of such programs. These requirements range from one-time recordkeeping and/or reporting to annual reporting. Where a facility believes that the Assessment has produced a False Positive, it may demonstrate that by means of annual reporting. Where needed, Corrective Actions include reports and operating records about Selection and Implementation of Remedies.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 74 hours per response. 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.

Respondents/Affected Entities: Construction and demolition waste landfill owners/operators and State Agencies.

Estimated Number of Respondents: 183.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 13,581 hours.

Estimated Total Annual Cost: $1,577,659, which includes $640,967 annualized capital expense, $936,692 O&M costs, and $471,724 Labor costs for Respondents and States.

Changes in the Estimates: There is a increase of 3,906 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the increase in the number of new construction & demolition waste disposal facilities that has occurred since the last renewal during the period of time from December 1, 2002 until November 30, 2005.

Dated: November 15, 2005.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 05–23217 Filed 11–22–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0029; FRL–8000–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Municipal Solid Waste Landfills (Renewal), ICR Number 1557.06, OMB Number 2060–0220

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this

document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0029, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2005–0029, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NSPS for Municipal Solid Waste Landfills (Renewal).

Abstract: The New Source Performance Standards (NSPS) for municipal solid waste landfills, were proposed on May 30, 1991, and promulgated on March 12, 1996. These standards apply to municipal solid waste landfills for which construction, modification or reconstruction commences on or after May 30, 1991. The rule requires the installation of properly designed emission control equipment, and the proper operation and maintenance of this equipment. These standards rely on the capture and reduction of methane, carbon dioxide, and nonmethane organic gas compound emissions by combustion devices (boilers, internal combustion engines, or flares). Owners and operators of the affected facilities described must make initial reports when a source becomes subject to the standards, conduct and report on performance tests, report on annual or periodic emission rates, report on design plans, report on equipment removal and closure, as well as maintain records of the reports, system design and performance tests, monitoring and exceedances, plot map, and well locations.

Any owner or operator subject to the provisions of this part must maintain a file of the applicable reporting and recordkeeping requirements for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 17 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes 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.

Respondents/Affected Entities: Owners or operators of municipal solid waste landfills.

Estimated Number of Respondents: 175.

Frequency of Response: On occasion, annually and initially.

Estimated Total Annual Hour Burden: 3,548 hours.

Estimated Total Annual Costs: $307,055 which includes $0 annualized Capital/Startup costs, $20,650 annual O&M costs, and $286,405 Respondent Labor costs.

Changes in the Estimates: There is an increase of 158 burden hours as compared with the active ICR. This

increase is due to calculation errors in previous reports.

The active ICR has both capital/startup costs and O&M costs. Because there are no new sources with reporting requirements, no capital/startup costs are incurred in this renewal. The only cost incurred is for the operation and maintenance of the monitors ($20,650), which has reduced the overall costs by $86,000.

Dated: November 7, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–23218 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2004–0006; FRL–8000–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Toxic Chemical Release Reporting (Form R) (Renewal), EPA ICR Number 1363.14, OMB Control Number 2070–0093

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2004–0006, to (1) EPA online using EDOCKET (our preferred method), by e-mail to oei.docket@epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, OEI Docket 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0753; e-mail address: *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 18, 2005, (70 FR 28520) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received comments from four organizations on this ICR during the comment period. A table summarizing the major comments and EPA's responses is available in the public docket.

EPA has established a public docket for this ICR under Docket ID No. OEI–2004–0006 which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Toxic Chemical Release Reporting (Form R) (Renewal)

Abstract: The Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of certain listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires facilities to provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a useful picture of the total disposition of chemicals in their communities and helps focus industry's attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected that is not subject to trade secrecy claims. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake regulatory and enforcement activities. Environmental and public interest groups use the data in studies and reports, making the

public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim trade secrecy for a chemical's identity as described in section 322 of EPCRA and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 350 and 40 CFR part 2.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51.3 hours per first year response for PBT chemicals and 29.6 hours per subsequent year response for non-PBT chemicals. There is additional burden associated with rule familiarization, compliance determination and supplier notification. 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.

Respondents/Affected Entities: Owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases, transfers and waste management activities for such chemicals.

Estimated Number of Respondents: 82,000.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 3,746,590 burden hours.

Estimated Total Annual Cost: $170,500,000 in labor costs.

Changes in the Estimates: There is a decrease of 142,162 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to (1) the fact that approximately 2,000 fewer forms were filed in RY2002 than in RY2001 and (2) the TRI Reporting Forms Modification Rule (70 FR 39931) that modified Form R to eliminate certain data elements and to simplify others.

Dated: November 15, 2005.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 05–23219 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–0007; FRL–8000–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts (Form A) (Renewal), EPA ICR Number 1704.08, OMB Control Number 2070–0143

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2005–0007, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, OEI Docket 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0753; e-mail address: *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 12, 2005, (70 FR 47195) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received only one positive comment on this ICR during the comment period and EPA agrees with commenter that ICR should be approved.

EPA has established a public docket for this ICR under Docket ID No. OEI–2005–0007, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's

policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts (Form A) (Renewal)

Abstract: The Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 requires certain facilities that manufacture, process, or otherwise use certain toxic chemicals in excess of specified threshold quantities to report their environmental releases of such chemicals annually. Each such facility must file a separate report for each such chemical.

In accordance with the authority provided by EPCRA, EPA has established an alternate reporting threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise meets the current reporting thresholds, but estimates that the total amount of the chemical that is released, disposed of, treated, recycled, or combusted for energy recovery does not exceed 500 pounds per year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the alternate threshold may file the Form A Certification Statement (EPA Form 9350–2) in lieu of a complete TRI reporting Form R (EPA Form 9350–1). In submitting the Form A Certification Statement, the facility certifies that the sum of the amount of EPCRA section 313 chemical released, disposed of, treated, recycled, or combusted for energy recovery does not exceed 500 pounds for the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A Certification Statement represents a substantial savings to respondents, both in burden hours and in labor costs. Form A was recently modified by certain changes that were promulgated in the TRI Reporting Forms Modification Rule (70 FR 39931). These changes eliminated certain fields from the Form A.

The Form A Certification Statement provides communities with information that the chemical is being manufactured, processed, or otherwise used at facilities. Additionally, the Form A Certification Statement provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must submit either a Form A Certification Statement or a Form R.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83.6 hours per first year response and 20.5 hours per subsequent year response. 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.

Respondents/Affected Entities: Owners or operators of certain facilities that manufacture process, or otherwise use certain specified toxic chemicals and chemical categories are required to report annually on the environmental releases, transfers, and waste management activities for such chemicals.

Estimated Number of Respondents: 4920.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 259,192 burden hours.

Estimated Total Annual Cost: $11,919,489 in labor cost.

Changes in the Estimates: There is a decrease of 22,847 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments to estimates in the number of responses (from 5,000 responses to 4,920 responses) and to first and subsequent year form completion burden reduction due to the TRI Reporting Forms Modification Rule (first year form completion fell from 2.1 hours to 1.6 hours and subsequent year form completion fell from 1.4 hours to 1.3 hours).

Dated: November 15, 2005.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 05–23220 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8001–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a 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.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1057.10; NSPS for Sulfuric Acid Plants (Renewal); in 40 CFR part 60, subpart H; was approved October 19, 2005; OMB Number 2060–0041; expires October 31, 2008.

EPA ICR No. 2181.01; Vehicle Service Information Web Site Audit; was approved October 19, 2005; OMB Number 2060–0574; expires October 31, 2008.

EPA ICR No. 1658.04; Control Technology Determinations for Constructed or Reconstructed Major Sources of Hazardous Air Pollutants (Renewal); in 40 CFR part 63, subpart B; was approved October 20, 2005; OMB Number 2060–0373; expires October 31, 2008.

EPA ICR No. 0370.19; Underground Injection Control Program (Renewal); in 40 CFR part 144–40 CFR part 148; was approved October 25, 2005; OMB Control Number 2040–0042; expires April 30, 2007.

EPA ICR No. 2015.02; Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Point Source Category (Renewal); in 40 CFR 430.02(f); was approved October 25, 2005; OMB Number 2040–0242; expires October 31, 2008.

EPA ICR No. 2097.02; The National Primary Drinking Water Regulations; Long Term 2 Enhanced Surface Water Treatment Rule (Final Rule); in 40 CFR 142.14–40 CFR 142.16, 40 CFR 131.33; was approved October 26, 2005; OMB Number 2040–0266; expires October 31, 2008.

EPA ICR No. 0783.47; Motor Vehicle Emission and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Renewal); in 40 CFR part 85, subparts R, S, T, V, W, and Y, 40 CFR part 86, subparts B, E, F, G, H, J, K, L, O, P, R, and S, 40 CFR part 600, subparts A, B, D, and F; was approved November 1, 2005; OMB Number 2060–0104; expires November 30, 2008.

EPA ICR No. 2185.01; State Review Framework; in 40 CFR 70.4(j)(1), 40 CFR 70.10(c)(1)(iii), 40 CFR 271.17(a), 40 CFR 123.41, 40 CFR 123.43; was approved November 1, 2005; OMB Number 2020–0031; expires November 30, 2008.

EPA ICR No. 1069.08; NSPS for Primary and Secondary Emissions from Basic Oxygen Furnaces (Renewal); in 40 CFR part 60, subparts N and Na; was approved November 1, 2005; OMB Number 2060–0029; expires November 30, 2008.

EPA ICR No. 1996.03; National Survey on Environmental Management of Asthma; was approved November 1, 2005; OMB Number 2060–0490; expires November 30, 2008.

EPA ICR No. 1983.04; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal); in 40 CFR part 63, subpart YY; was approved November 2, 2005; OMB Number 2060–0489; expires November 30, 2008.

EPA ICR No. 0988.09; Water Quality Standards Regulation (Renewal); in 40 CFR 131.6–131.8, 131.20–131.22, 132.1–132.5, part 132 Appendices A–E, and Procedures 1 and 2 of Appendix F; was approved November 8, 2005; OMB Number 2040–0049; expires November 30, 2008.

EPA ICR No. 1829.03; Best Management Practices (BMP) for the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper and Paperboard Point Source Category (Renewal); in 40 CFR 430.03 and 40 CFR 122.44(k); was approved November 8, 2005; OMB Number 2040–0207; expires November 30, 2008.

EPA ICR No. 2048.02; BEACH Act Grant Program (Renewal); was approved November 8, 2005; OMB Number 2040–0244; expires on November 30, 2008.

EPA ICR No. 1877.03; Milestones Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (Renewal); in 40 CFR 430.24(b)(c); was approved November 8, 2005; OMB Number 2040–0202; expires November 30, 2008.

EPA ICR No. 0277.14; Application for New and Amended Pesticide Registration; in 40 CFR part 152, 40 CFR part 156, and 40 CFR part 158; was approved November 8, 2005; OMB Number 2070–0060; expires November 30, 2008.

EPA ICR No. 2053.01; Best Workplaces for Commuters Program; was approved November 9, 2005; OMB Number 2060–0571; expires November 30, 2008.

EPA ICR No. 0619.10; Highway Vehicle Activity and Emissions (Renewal); was approved November 9, 2005; OMB Number 2060–0078; expires November 30, 2008.

EPA ICR No. 1285.06; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (40 CFR part 86, subpart L) (Renewal); in 40 CFR part 86, subpart L; was approved November 9, 2005; OMB Number 2060–0132; expires November 30, 2008.

Comment Filed

EPA ICR No. 2086.01; Dioxin and Dioxin-Like Compounds; Toxic Equivalency Reporting; Community Right-to-Know Toxic Chemical Release Reporting (Proposed Rule); OMB filed comments October 25, 2005.

EPA ICR No. 2192.01; Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems (Proposed Rule); OMB filed comments November 8, 2005.

Dated: November 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–23222 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0010; FRL–8000–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements Under EPA's WasteWise Program (Renewal), EPA ICR Number 1698.06, OMB Control Number 2050–0139

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0010, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles Heizenroth, Office of Solid Waste, 5306W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–0154; fax number: (703) 308–8686; e-mail address: *heizenroth.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 30, 2005 (70 FR 37818), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0010, which is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Resource Conservation and Recovery Act (RCRA) Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program (Renewal).

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include partners, which commit to implementing waste reduction activities of their choice, and endorsers which promote the WasteWise program and waste reduction to their members.

The Partner Registration Form identifies an organization and its facilities registering to participate in WasteWise, and requires the signature of a senior official that can commit the organization to the program. (This form can be submitted either electronically or in hard copy.) Within six months of registering, each partner is asked to conduct a waste assessment and submit baseline data and waste reduction goals to EPA via the Annual Assessment Form. (This form can also be submitted either electronically or in hard copy.) On an annual basis partners are asked to report, via the Annual Assessment Form, on their progress toward achieving their waste reduction goals by estimating amounts of waste prevented and recyclables collected, and describing buying or manufacturing recycled-content products. They can also provide WasteWise with information on total waste prevention revenue, total recycling revenue, total avoided purchasing costs due to waste prevention, and total avoided disposal costs due to recycling and waste prevention. Additionally, they are asked to submit new waste reduction goals.

Endorsers, which are typically trade associations or state/local governments, submit the Endorser Registration Form once during their endorser relationship with WasteWise. (This form can be submitted either electronically or in hard copy.) The Endorser Registration Form identifies the organization, the principal contact, and the activities to which the Endorser commits.

EPA's WasteWise program uses the submitted information to (1) identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWise partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The respondent burden for this collection is estimated to average 1 hour per response for the Partner Registration Form, 40 hours per response for the Annual Assessment Form, and 10 hours per response for the Endorser Registration Form. This results in an estimated annual partner respondent burden of 41 hours for new partners, 40 hours for established partners, and a one-time respondent burden of 10 hours for endorsers.

The estimated number of respondents is 1,425 in Year 1; 1,525 in Year 2; and 1,625 in Year 3. Estimated total annual burden on all respondents is 52,700 hours in Year 1; 56,700 hours in Year 2; and 60,700 hours in Year 3. 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.

Respondents/Affected Entities: The WasteWise program was initially targeted to the Fortune 500 manufacturing companies and the Fortune 500 service companies. During the period covered by this ICR, however, WasteWise will continue to focus its marketing efforts on a broader audience, including medium to large size businesses, universities, and federal/state/local/tribal governments. While WasteWise actively promotes the program to a smaller subset of these groups, the program is open to all companies, trade associations, nonprofit

organizations, schools, colleges, universities, and federal/state/local/tribal governments. Due to the broad universe of eligible WasteWise partners, a relevant list of NAICS codes would include virtually every business area contained in the NAICS code manual. Therefore, it is not practical to include such a comprehensive list of affected organizations. The WasteWise Endorser Program initially targeted more than 100 trade associations across numerous industry sectors. The program is, however, open to all trade associations, membership organizations, and federal/state/local/tribal organizations.

Estimated Number of Respondents: 1,525.

Frequency of Response: Once when registering for the program, then yearly to report progress.

Estimated Total Annual Hour Burden: 56,700.

Estimated Total Annual Cost: Includes $0 annualized capital or O&M costs, and $3,000,000 annual labor costs.

Changes in the Estimates: There is an increase of 350 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment. Participation in the program has increased.

Dated: October 27, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–23224 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0008, FRL–8001–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal), EPA ICR Number 0262.11, OMB Control Number 2050–0034

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0008, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Toshia King, Environmental Protection Agency, Mail Code 5303W, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–7033; fax number: 703–308–8617; e-mail address: *king.toshia@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 2, 2005 (70 FR 22657), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0008, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–1744. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal)

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSDF) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes managed. Section 3005 of Subtitle C of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes: The design capacity of such processes: and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 25 hours per response for new applications, 13 for revised applications. 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.

Respondents/Affected Entities: Any person or organization who generates or transports regulated waste or owns or operates a facility for the treatment, storage, or disposal of regulated waste.

Estimated Number of Respondents: 23.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 402.

Estimated Total Annual Cost: $29,056, which includes $0 annualized capital costs, $172 annualized O&M costs, and $28,884 Respondent Labor Costs per year.

Changes in the Estimates: There is a decrease of 174 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the number of revised Part A Applications decreasing from 28 per year for the years 1999, 2000, and 2001 to 15 per year for the years 2002, 2003, and 2004.

Dated: November 15, 2005.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 05–23225 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8000–8]

Tribal Solid Waste Management Assistance Project: Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Tribal Solid Waste Interagency Workgroup is soliciting proposals for its eighth year of the Tribal Solid Waste Management Assistance Project (previously called the Open Dump Cleanup Project). Since FY99, the Workgroup has funded over 100 projects with approximately $15.4 million. In FY05, the Interagency Workgroup made approximately $2 million available to fully or partially fund 20 selected projects. A similar amount of funding is projected for FY06. The Project is part of a Federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management. The Workgroup was established in April 1998 to coordinate Federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); and the Departments of Agriculture and Defense.

DATES: For consideration, proposals must be postmarked by January 31, 2006 and received by EPA no later than February 10, 2006. Proposals received after the closing date will not be considered. Electronic submissions must be submitted no later than January 31, 2006. See the Guidance for Applicants package for more information on the submission deadline.

FOR FURTHER INFORMATION CONTACT: Copies of the Guidance for Applicants package may be downloaded from the Internet at *http://www.epa.gov/tribalmsw* by clicking on the ''Grants/Funding'' link. Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Christopher Dege, 703–308–2392 or Charles Bearfighter Reddoor 703–308–8245.

IHS—Steve Aoyama, 301–443–1046.

BIA—Debbie McBride, 202–208–3606.

SUPPLEMENTARY INFORMATION: *Criteria:* Eligible recipients of assistance under The Open Dump Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this project may be found in the Guidance for Applicants package.

Dated: November 16, 2005.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. 05–23226 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8000–7]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered SAB.

DATES: A public meeting of the EPA SAB will be held December 14, 2005 from 1 p.m. to approximately 4 p.m. eastern time.

ADDRESSES: The meeting will be held at the U.S. EPA Headquarters in the Ronald Reagan International Trade Center, 1200 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information concerning this meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9982; by fax at (202) 233–0643; or by e-mail at: *miller.tom@epa.gov.* General information concerning the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab.* Technical Contact: For questions and information concerning the draft SAB report that is to be reviewed during the meeting, contact Dr. Holly Stallworth, U.S. EPA, SAB Staff Office by telephone at (202) 343–9867, fax at (202) 233–0643, or e-mail at *stallworth.holly@epa.gov.*

SUPPLEMENTARY INFORMATION: *SAB:* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The purpose of this meeting will be to allow the Board to complete it Fiscal Year 2006 planning; to review at least one draft SAB Panel report, *SAB Advisory on Superfund Benefits Analysis;* and to receive a briefing by EPA representatives on recent activities associated with its March, 2004 staff paper, *Risk*

Assessment Principles & Practices (EPA/100/B–04/001; available on the Web at *http://www.epa.gov/osainter/pdfs/ratf-final.pdf).*

Any other topics to be discussed will be reflected in the meeting agenda that will be available on the SAB Web site, *http://www.epa.gov/sab* (under ''Meeting Agendas'') in advance of the meeting.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web site at http://www.epa.gov/sab/ in advance of this meeting or are available as noted above.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The EPA SAB Staff Office expects the public statements presented at SAB meetings will not repeat previously-submitted oral or written statements. *Oral Comments:* Requests to provide oral comment must be in writing (e-mail or fax) and received by Mr. Miller no later than Wednesday, November 30, 2005 to reserve time on the December 14, 2005 meeting agenda. Opportunities for oral comments will be limited to five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by November 30, 2005 so that comments may be made available to the SAB for their consideration. Comments should be received by Mr. Miller in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mr. Thomas O. Miller at (202) 343–9982 or *miller.tom@epa.gov.* To request accommodation of a disability, please contact Mr. Miller, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request. Such accommodation is required by sections 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794 and 794d, EPA's implementing regulations, 40 CFR part 12, and the Federal standards for ''Electronic and Information Technology Accessibility,'' 36 CFR part 1194, which govern accessibility and accommodation in relation to EPA programs and activities, such as Federal Advisory Committee meetings.

Dated: November 16, 2005.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–23215 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0284; FRL–7748–1]

Resmethrin Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the synthetic pyrethroid pesticide resmethrin, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED), for resmethrin through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0284, 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: Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8041; e-mail address: *hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0284. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the

document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0284. 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–2005–0284. 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–2005–0284.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0284. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for resmethrin, a synthetic pyrethroid insecticide, and soliciting public comment on risk management ideas or proposals. Resmethrin is an insecticide used for indoor space treatments and crack and crevice treatments in residential and commercial areas. Resmethrin is also formulated as a ultra-low volume (ULV) outdoor mosquito adulticide. EPA developed the risk assessments and risk characterization for resmethrin through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Resmethrin is a synthetic pyrethroid insecticide used in commercial and residential areas for treatment of many species of insects. Resmethrin is used for indoor space treatments, crack and crevice treatments, and as a mosquito adulticide ULV spray in residential and commercial areas. Currently there is one tolerance, set at 3 parts per million (ppm), for food items that have come in contact with resmethrin when it is used in food handling establishments (40 CFR 180.525). Resmethrin may be used as an insecticide by private citizens in their homes and may also be applied indoors by commercial pest control operators. It is also used by certified applicators as a ULV spray for outdoor mosquito control. Resmethrin is used alone, with other active ingredients, and in combination with synergists such as piperonyl butoxide, that increase the effectiveness of resmethrin. Approximately 50,000 pounds (lbs) of resmethrin are applied per year.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for resmethrin. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as the percent of food handling establishment actually treated with resmethrin, or mitigation options for ecological risk, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for resmethrin. The current resmethrin human health risk assessment indicates a potential risk of concern from dietary exposure to products used in food handling establishments for control of insects. The assessment utilizes an assumption that one-hundred percent of food handling establishments are treated with resmethrin. This is a conservative assumption given that the total volume of resmethrin used in the United States is approximately 50,000 lbs annually, an amount that is not sufficient to treat all the food handling establishments in the United States. Thus, information on resmethrin use in food handling establishments, such as amount used and frequency of application, would be helpful to refine the dietary assessment. The current resmethrin human health risk assessment also indicates a potential risk of concern for products used by private citizens to treat enclosed spaces for insect control. The exposure assumptions used in the assessment include exposure for 3 days a year for 50 years treating 1,600 square feet of surface area with one 10 ounce (oz) spray can containing a maximum of 0.2% active ingredient (ai). The exposure duration used is less than or equal to 2 hours and the adult breathing rate is one cubic meter per hour. Information to confirm or refute these assumptions would be useful, as would suggestions for reducing exposure for this use.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to resmethrin, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For resmethrin, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited risk and use. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I.C. and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for resmethrin. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 14, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–22998 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0227; FRL–7746–8]

Acetochlor Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health risk assessment, and related documents for the chloroacetanilide pesticide acetochlor, and opens a public comment period on these documents. EPA is developing a tolerance reassessment progress and risk management decision (TRED) for acetochlor through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0227, 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: Felecia Fort, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7478; fax number: (703) 308–8005; e-mail address: *fort.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0227. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your

comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0227. 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–2005–0227. 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–2005–0227.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0227. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessment and related documents for the pesticide acetochlor. Acetochlor is a preemergence herbicide used for the control of weeds. EPA developed the risk assessment and risk characterization for acetochlor through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Acetochlor, 2-chloro-N-(ethoxymethyl)-N-(2-ethyl-6-methylphenyl)acetamide, is only registered for use on field corn. Corn fields treated with acetochlor may later be rotated to grain sorghum (milo), soybeans, tobacco, and wheat, according to the currently registered use pattern. Formulations of products containing acetochlor include emulsifiable concentrate, soluble concentrate, microencapsulated, or granular formulations. Products containing acetochlor may be applied using only ground equipment. Due to surface and ground water contamination concerns, use of acetochlor is restricted near water sources and on various sandy soils. Corn and the rotational crops listed in this document were considered in the risk assessment supporting the acetochlor TRED. There are no dietary risks of concern associated with the use of acetochlor. Although the Acetochlor Registration Partnership (ARP) has submitted petitions for the registration of several new uses, these uses have not been considered in this risk assessment and will not be included in the TRED.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for acetochlor. Such comments and input could address, for example, the availability of additional data to further

refine the risk assessments, such as, percent crop treated information, residue data from food processing studies, etc., or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to acetochlor, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For acetochlor, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its few complex issues. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency will address the risk assessments as necessary. The decisions presented in the TRED may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the chloroacetanilides pesticides.

All comments should be submitted using the methods in Unit I.C., and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for acetochlor. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–23223 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0290; FRL–7746–2]

Maleic Hydrazide; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide maleic hydrazide, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide maleic hydrazide through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket ID number OPP–2005–0290, must be received on or before January 23, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; fax number: (703) 308–8041; e-mail address:*pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0290. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0290. 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–2005–0290. 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–2005–0290.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0290. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of maleic hydrazide, reassessed 3 existing tolerances or legal residue limits, and on September 22, 2005, reached a tolerance reassessment decision for this low risk pesticide. Maleic hydrazide is a plant growth regulator and herbicide. It is used as a plant growth regulator to control sucker growth on tobacco, to retard the growth of turf, and to inhibit sprout growth in stored onions and potatoes, as well as on non-bearing apple and citrus trees, forest trees, and ornamental plants. Maleic hydrazide is also used as a herbicide to control quack grass, wild onions, wild garlic, and other undesirable weeds on residential lawns, in terrestrial non-food crops and industrial areas, and along roadsides and other rights-of-way. The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for maleic hydrazide, known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the maleic hydrazide TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the maleic hydrazide tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like maleic hydrazide, which pose no risk concerns, and require little risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the maleic hydrazide TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Maleic hydrazide, however, poses no risks that require mitigation. Although the database is sufficient to make a tolerance reassessment determination for maleic hydrazide, there are still several outstanding data gaps that must be fulfilled. Therefore, the Agency is requiring data on the magnitude of residue in livestock, storage stability studies for onions and potatoes, and a 28–day inhalation toxicity study. In addition, the Agency is also requiring a few changes to the maleic hydrazide product labels such as:

1. A statement on all labels restricting application to professional applicators only; and
2. A 120–day plant-back interval for all rotational crops.

The Agency therefore is issuing the maleic hydrazide TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for maleic hydrazide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 14, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–22997 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0139; FRL–7745–3]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Dow AgroSciences LLC, to conditionally register the pesticide products Aminopyralid Technical and Milestone™ containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-305-6103; e-mail address:*Miller.Joanne@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), e.g., agricultural workers; greenhouse, nursery and floriculture workers; farmers
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse nursery, and floriculture workers; ranchers; pesticide applicators
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers, greenhouse, nursery, and floriculture workers

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–2004–0139. 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 Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of Aminopyralid (2-pyridine carboxylic, 4-amino-3,6-dichloro-) and the Triisopropanolammonium salt of Aminopyralid, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature 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 Aminopyralid and its Triisopropanolammonium salt during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice published in the **Federal Register** of December 20, 2004 (69 FR 75948–75950)(FRL–7690–9), which announced that Dow AgroSciences LLC, Zionsville Road, Indianapolis, IN 46268, had submitted applications to conditionally register the pesticide products: Aminopyralid Technical (EPA File Symbol 62719–LRI) containing 95.3% active ingredient for manufacturing use only, and GF–871 (EPA File Symbol 62719–LRO) containing 40.6% of the

Triisopropanolammonium salt of aminopyralid to be used as a herbicide for control of annual and perennial broadleaf weeds, including invasive and noxious weeds, on range permanent grass pastures, Conservation Reserve Program (CRP) acres, non-cropland areas (such as rights-of-way, roadsides and non- irrigation ditch banks), natural areas (such as wildlife management areas, recreation areas, campgrounds, trail heads and trails), and grazed areas in and around these sites; and for control of annual and perennial broadleaf weeds in wheat (including spring wheat, winter wheat, and durum). These active ingredients have not been included in any previously registered pesticide product.

These applications were conditionally approved and the following pesticide products were conditionally registered on August 10, 2005:

1. Aminopyralid Technical, EPA Registration Number 62719–518,

2. Milestone™, EPA Registration Number 62719–519.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 15, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–23108 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0296; FRL–7746–1]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0296, must be received on or before December 23, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1259; e-mail address: *Wilkins.Raderrio@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 code112)
- 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–2005–0296. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be

transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0296. 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–2005–0296. 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), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0296.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0296. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 79766–R. *Applicant*: Falcon Lab, LLC. 1103 Norbee Drive, Wilmington, DE 19803. *Product Name*: Falcon Lab LLC. Racer ™ Concentrate Non-Selective Herbicide. *Type Product*: Contact herbicide. *Active ingredient*: Ammonium pelargonate at 40%. *Proposed classification/Use*: For the suppression and control of weeds, vines and underbrush.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 10, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–23107 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7999–1]

Proposal of addition of certain substances to the 1998 Aarhus Persistent Organic Pollutants (POPs) Protocol under the Long-Range Transboundary Air Pollution Convention of the United Nations Economic Commission for Europe (UNECE): Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: This notice announces the availability of data and information concerning dossiers (or proposals) for the addition of hexachlorobutadiene, octabromo diphenyl ether (octaBDE), pentachlorobenzene, polychlorinated napthalenes, short-chain chlorinated parrafins (SCCPs), dicofol, pentabromodiphenyl ether (PeDBE), and perfluorooctane sulfonate (PFOS) as persistent organic pollutants (POPs) submitted to the Secretariat of the 1998 Aarhus POPs Protocol Under the Long-Range Transboundary Air Pollution (LRTAP) Convention of the UNECE. We are issuing this NODA to alert interested and potentially affected parties of these proposals; to announce the substances proposed for inclusion in the Protocol; to provide the Web site where these proposals may be reviewed; to provide the addresses where comments or information may be submitted; and to provide the deadline for submitting comments and information. We are also issuing the NODA to solicit names and contact information for those parties who would like to be notified when proposals under the Aarhus POPs Protocol occur.

DATES: Comments and information on these proposals must be received on or before December 9, 2005.

ADDRESSES: The proposals can be found at the following Web site: *http://www.unece.org/env/popsxg/proposals%20for%20NEW%20pops.htm.* Comments and information on these proposals should be submitted to the UNECE Secretariat for the POPs Task Force via e-mail at *air.env@unece.org.* Please provide a copy of your comments and information submitted to Paul Almodóvar of the U.S. EPA, Office of Air Quality Planning and Standards via e-mail at *almodovar.paul@epa.gov.* If you are interested in being contacted in the future when proposals under this Protocol occur, please notify Paul Almodóvar directly.

FOR FURTHER INFORMATION CONTACT: Paul Almodóvar of the U.S. EPA, Office of Air Quality Planning and Standards, Information Transfer Program Implementation Division, C304–03, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0283, e-mail at *almodovar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline: The information presented in this NODA is organized as follows:

I. 1998 Aarhus POPs Protocol Under the Long-Range Transboundary Air Pollution Convention of the UNECE
  a. What Is the Long-Range Transboundary Air Pollution (LRTAP) Convention of the UNECE?
  b. What Is the 1998 Aarhus POPs Protocol?
II. Proposals for New POPs
  a. Who Are the Nominating Countries?
  b. What Do the Proposals Address?
  c. What Is Involved in the Technical Review of These Proposals?
  d. Other Proposals

I. 1998 Aarhus POPs Protocol Under the Long-Range Transboundary Air Pollution Convention of the UNECE

a. What Is the LRTAP Convention of the UNECE?

The LRTAP Convention functions to foster intergovernmental cooperation and has created the essential framework for controlling and reducing the damage to human health and the environment caused by transboundary air pollution. Since entry into force of the Convention 8 specific Protocols have also been completed to address transboundary air pollution, one of which is the 1998 Aarhus POPs Protocol, which today's NODA addresses. The United States is a Party to the LRTAP Convention. The focus of the Parties to the Convention over the next several years will be to ensure implementation of these protocols. Participation in this Convention allows the United States to continue to assert its leadership role in shaping the substance and structure of LRTAP protocols as they continue to tackle complex pollution issues and serve as models for action in other regional bodies, as well as for global environmental agreements.

b. What Is the 1998 Aarhus POPs Protocol?

The 1998 Aarhus POPs Protocol under the LRTAP Convention was established with the objective of controlling, reducing or eliminating discharges, emissions, and losses of POPs. POPs are defined in the Protocol as organic substances that (i) possess toxic characteristics; (ii) are persistent; (iii) bioaccumulate; (iv) are prone to long-range transboundary atmospheric transport and deposition; and (v) are likely to cause significant adverse human health or environmental effects near to and distant from their sources. The Protocol outlines basic obligations for countries that are Parties to the Protocol (have ratified the Protocol) for achieving this objective, and includes methods by which Parties to the Protocol can fulfill the basic obligations, including identifying best available techniques and emission limit values for stationary sources of POPs, and effective measures to control POPs emissions from mobile sources. The Protocol identifies POPs that have been targeted and scheduled for elimination (aldrin, chlorodane, clordecone, DDT, deildrin, endrin, heptachlor, hexabromobiphenyl, hexachlorobenzene, mirex, PCB, and toxaphene; Annex I of the Protocol); for use restrictions (DDT, HCH, PCB; Annex II of the Protocol); and for annual reductions in emissions from a specified reference year, achieved by taking effective measures as appropriate (polycyclic aromatic hydrocarbons (PAHs), Dioxins/furans, and hexachlorobenzene). The Protocol in its entirety can be viewed at the LRTAP POPs Web site at *http://www.unece.org/env/lrtap/pops_h1.htm.* The United States is currently not a Party to the Aarhus POPs Protocol. Legislation is being developed that would allow the United States to become Parties to, and implement the protocol.

II. Proposals To Include Substances as POPs

a. Who Are the Nominating Countries?

The Protocol provides procedures by which Parties to the Protocol can propose to amend annex I, II, or III by adding substances to the Protocol. These procedures are outlined in Article 14 of the Protocol.

This year, the European Commission has submitted proposals for hexachlorobutadiene, OctaBDE, pentachlorobenzene, polychlorinated napthalenes, and SCCPs, and the Netherlands has submitted a proposal for dicofol.

b. What Do the Proposals Address?

The proposals need to provide information that allows a determination of whether the substance is a POP in the context of the Protocol. The proposals (*e.g.*, risk profiles) are described as a comprehensive review of the scientific information related to the determination of general human health and environmental risks associated with the uses and releases of a substance. Specifically, the proposals document the following characteristics: potential for long-range transport; toxicity; persistence; and bioaccumulation. The POPs Protocol provides guidance on numerical descriptors, as appropriate, to assist in the evaluation of the above characteristics in the context of the program. In addition to individual determinations, the evaluation includes a consideration as to whether sufficient information exists to suggest that the substance is likely to have significant adverse human health and/or environmental effects as a result of its long-range transboundary atmospheric transport (LRAT). The protocol also provides guidance to assist in the evaluation of socio-economic information to help frame the strategy for reducing risks from the proposed substances. The proposal must include, as available, information on release to the environment, including production, uses, and emissions, plus socio-economic factors related to the alternatives and/or techniques available to reduce emissions of the proposed substance. At this time, the proposals are available for public review and submission of comments and information (see the **ADDRESSES** section of this NODA for where to find these proposals) to supplement information contained in the dossiers. All relevant comments and information will be considered during the technical reviews of these proposals.

c. What Is Involved in the Technical Review of These Proposals?

The Executive Body (EB) (which is the Convention's ''conference of the parties''), has decided that the Task Force on POPs shall prepare technical reviews of such proposals when requested to do so, and present relevant documentation on the proposals to the Working Group on Strategies and Review (WGSR). The WGSR is the group under the Convention which amongst other activities, develops ''strategies (*i.e.*, negotiates) for action on substances and proposes such actions for adoption by the EB. Membership of the Task Force is open to experts from all Parties to the Convention, and to authorized representatives of intergovernmental or accredited non-governmental organizations. The Task Force on POPs receives its instructions from the annual work plan of the EB, but reports to the WGSR.

A definitive description of the process for technical reviews of the proposals can be found at the following Web site: *http://www.unece.org/env/popsxg/proposals%20for%20NEW%20pops.htm.*

The proposals submitted by the European Commission and the Netherlands will be considered by the EB of the Convention at its session on December 12–15, 2005 for acceptability and referral to the Task Force on POPs for technical review. These proposals can be reviewed at the website listed above in the **ADDRESSES** section of this NODA. Comments and information may be submitted until December 9, 2005 to the entities listed in the **ADDRESSES** section.

d. Other Proposals

Last year Norway submitted a proposal for pentbromodiphenyl ether (PeBDE) and Sweden submitted a proposal for perfluorocotane sulfonate (PFOS). These proposals were referred by the EB of the Convention for technical review to the Task Force on POPs in its session in December 2004. Both of these substances underwent the first stage of technical review by the Task Force on POPs, and have been recommended by the WGSR as POPs, as defined under the POPs Protocol to the EB of the Convention. *(http://www.unece.org/env/documents/2005/eb/wg5/eb.air.wg.5.2005.1.e.pdf).*

Based on the recommendation of the WGSR, the Task Force on POPs is expected to be asked by the EB to develop proposed management strategies for both PeBDE and PFOS. To develop these management strategies, information on production/uses/emissions, measured environmental levels in areas distant from sources, abiotic and biotic degradation processes, and rates, degradation products, bio-availability; and socio-economic factors related to the alternatives and/or the techniques available to reduce the emissions of the proposed substance including: Alternatives to the existing uses and their efficacy; any known adverse environmental or human health effects associated with the alternatives; process changes, control technologies, operating practices, and other pollution prevention techniques which can be used to reduce the emissions of the substance, and their applicability and effectiveness; and the non-monetary costs and benefits as well as the quantifiable costs and benefits associated with the use of these alternatives and/or techniques is being sought. This information may be submitted until December 9, 2005 to the entities listed in the **ADDRESSES** section.

Dated: November 14, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–23227 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8001–6]

Adequacy of Illinois Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination of adequacy.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is proposing to approve a modification to Illinois' approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law and regulations.

DATES: All comments on Illinois' application for approval of its research, development and demonstration permit modification must be received by close of business on December 23, 2005.

ADDRESSES: Written comments should be sent to Donna Twickler, Waste Management Branch (Mail code: DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, telephone: (312) 886–6184. Comments may also be submitted electronically to: *twickler.donna@epa.gov* or by facsimile at (312) 353–4788. You may examine copies of the relevant portions of Illinois' regulations during normal business hours at U.S. EPA Region 5.

FOR FURTHER INFORMATION CONTACT: Donna Twickler, Waste Management Branch (Mail code DW–8J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–6184, *twickler.donna@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, U.S. EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research,

development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through State-issued RD&D permits. RD&D permits are only available in States with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from U.S. EPA before issuing such permits. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Illinois MSWLF permit program was approved on January 3, 1994 (59 FR 86). On September 21, 2005, Illinois applied for approval of its RD&D permit provisions. Illinois submitted its rules under R05–1 for review.

B. Decision

After a thorough review, U.S. EPA Region 5 is proposing that Illinois' RD&D permit provisions as defined under Illinois rule R05–1 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: November 16, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–23228 Filed 11–22–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 10, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0526.

OMB Approval Date: 10/26/2005.

Expiration Date: 10/31/2008.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141.

Form No.: N/A.

Estimated Annual Burden: 17 responses; 816 total annual burden hours; approximately 48 hours average per respondent.

Needs and Uses: The Commission requires Tier 1 Local Exchange Carriers (LECs) to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection is operational. In the Fifth Report and Order in CC Docket No. 96–262, the Commission allows price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

OMB Control No.: 3060–0742.

OMB Approval Date: 11/01/2005.

Expiration Date: 11/30/2008.

Title: Telephone Number Portability (47 CFR Part 52, Subpart C, Sections 52.21–52.33) and CC Docket No. 95–116.

Form No.: N/A.

Estimated Annual Burden: 2,027 responses; 14,333 total annual burden hours; approximately 2–149 hours average per respondent.

Needs and Uses: 47 CFR Part 52, Subpart C implements the statutory requirement that local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers provide local number probability (LNP). This collection is being revised to include the implementation of wireless carriers providing LNP. Wireline carriers began providing LNP in 1998. In a *Memorandum Opinion and Order* (FCC 02–215) in CC Docket No. 95–116, the Commission extended the deadline for CMRS providers to offer LNP. Long-term number portability must be provided by LECs and CMRS providers in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed.

Incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number portability charges. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term number portability. Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability.

OMB Control No.: 3060–0989.

OMB Approval Date: 11/01/2005.

Expiration Date: 11/30/2008.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR Sections 63.01, 63.03 and 63.04.

Form No.: N/A.

Estimated Annual Burden: 86 responses; 959 total annual burden hours; approximately 1.5–12 hours average per respondent.

Needs and Uses: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control are set forth for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 214, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain Federal Communications Commission (FCC) approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers therefore require affirmative action by the FCC before the acquisition can occur.

OMB Control No.: 3060–0770.

OMB Approval Date: 11/07/2005.

Expiration Date: 11/30/2008.

Title: Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1 (New Services).

Form No.: N/A.

Estimated Annual Burden: 34 responses; 170 total annual burden hours; approximately 5 hours average per respondent.

Needs and Uses: In the *Fifth Report and Order,* the Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by Section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under Sections 61.49(f) and (g). These modifications eliminated the delays that existed for the introduction of new services as well as to encourage efficient investment and innovation.

The Commission no longer requires an incumbent LEC to introduce a new service by filing a waiver under Part 69 of the Commission's rules. Instead, incumbent LECs are allowed to file a petition for the new service based on a public interest standard. After the first incumbent LEC has satisfied the public interest requirement for establishing new rate elements for a new switched access service, other incumbent price cap LECs can file petitions seeking authority to introduce identical rate elements for identical new services, and their petitions will be reviewed within ten days. If the Common Carrier Bureau (now the Wireline Competition Bureau) does not act within the prescribed time, authority to establish the rate elements in question are deemed granted. In the event the Bureau denies an incumbent LEC's initial petition, or a subsequent petition filed by another incumbent LEC, the petitioner must file a Part 69 waiver petition.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22841 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 9, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 23, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0900.

Title: Compatibility of Wireless Services with Enhanced 911; Second Report and Order, CC Docket No. 94–102.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 140.

Estimated Time Per Response: 20 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,190 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The rules in this proceeding requires that analog cellular phones include a separate capability for processing 911 calls that permits those calls to be handled, where necessary, by either cellular carrier in the area. This rule applies to new handsets manufactured for sale in the United States after 02/13/00. The rulemaking also sets forth guidelines for 911 call completion methods that satisfy the Commission's rules and approved three methods for compliance with the call completion rules, Automatic A/B Roaming-Intelligent Retry, Adequate/Strongest Signal, and Selective Retry. Manufacturers may satisfy their requirement by selecting any one of these methods, all of which entail software or hardware modifications. This information submitted by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying with E911 call completion regulations. The rulemaking also supported as a voluntary measure (not a requirement) industry efforts to educate users of analog phones with regard to capabilities of the A over B, B over A, (A/B, B/A) logic for 911 calls. This approach would provide that all analog cellular calls, including 911 calls, would be routed to the customer's preferred carrier if a usable channel is available. If a channel is not available, the handset would automatically switch to a usable channel on the other cellular carrier's system. The industry program to educate users should also inform customers of the possibility that an A/B, B/A approach could produce unexpected and wanted roaming charges in the case of ordinary calls.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22842 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 10, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 23, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1022.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 101.1403 requires certain Multichannel Video Distribution and Data Service (MVDDS) licensees to comply with the statutory broadcast carriage requirements of 47 U.S.C. Section 325(b)(1). These MVDDS licensees must obtain the prior express authority of a broadcast station before retransmitting that station's signal.

With this submission, the Commission is revising this information collection because on July 7, 2003, the Commission released a Third Report and Order in ET Docket No. 98–206 (FCC 03–152) that decreased the number of MVDDS license areas from 354 Component Economic Areas (CEAs) to 214 license areas (210 Designated Market Areas (DMAs) and four FCC-defined areas). As a result of this change the number of respondents required to meet the requirements of Section 101.1403 decreased from 354 to 214.

OMB Control No.: 3060–1023.

Title: Section 101.103, Frequency Coordination Procedures.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .5 hours—1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,177 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 101.103(f) requires MVDDS licensees to provide notice of intent of construct of proposed antenna to NGSO FSS licensees operating in the 12.2 '' 12.7 GHz frequency band and maintain an Internet Web site of all existing transmitting sites and transmitting antenna that are scheduled for operation within one year including the ''in service'' dates.

With this submission, the Commission is revising this information collection because on July 7, 2003, the Commission released a Third Report and Order in ET Docket No. 98–206 (FCC 03–152) that decreased the number of MVDDS license areas from 354 Component Economic Areas (CEAs) to 214 license areas (210 Designated Market Areas (DMAs) and four FCC-defined areas). As a result of this change the number of respondents required to meet the requirements of Section 101.103 decreased from 354 to 214. However, the Commission is increasing the total annual burden hours to 1,177 (from 177 hours) to reflect the previously approved requirement to establish and update an Internet site.

OMB Control No.: 3060–1024.

Title: Section 101.1413, License Term and Renewal Expectancy.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion and 10 year reporting requirements.

Total Annual Burden: 107 hours.

Total Annual Cost: $5,300.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 101.1413 requires MVDDS licensees to file a showing of substantial service at five and ten years into the initial license term. The substantial service requirement is defined as a service that is sound, favorable, and substantially above the level of mediocre service which might minimally warrant renewal. The renewal obligation of an MVDDS licensee must include the following showings in order to claim a renewal expectancy: (1) A coverage map depicting the served and unserved areas; (2) a corresponding description of current service in terms of geographic coverage and population served or transmitter locations in the served areas; and (3) copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy. With this submission, the Commission is revising this information collection because on July 7, 2003, the Commission released a Third Report and Order in ET Docket No. 98–206 (FCC 03–152) that decreased the number of MVDDS license areas from 354 Component Economic Areas (CEAs) to 214 license areas (210 Designated Market Areas (DMAs) and four FCC-defined areas). As a result of this change the number of respondents required to meet the requirements of Section 101.1413 decreased from 354 to 214.

OMB Control No.: 3060–1025.

Title: Section 101.1440, MVDDS Protection of Direct Broadcast Satellites (DBS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 217.

Estimated Time Per Response: 40 hours for 214 MVDDS licensees; 25 hours per 3 DBS licensees.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 8,635 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 101.1440 requires MVDDS licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee must then provide specific information to the DBS licensee(s). Alternatively, MVDDS licensees may obtain a signed written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate Equivalent Power Flux Density (EPFD) limits. The DBS licensee must thereafter provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmitter site.

With this submission, the Commission is revising this information collection because on July 7, 2003, the Commission released a Third Report and Order in ET Docket No. 98–206 (FCC 03–152) that decreased the number of MVDDS license areas from 354 Component Economic Areas (CEAs) to 214 license areas (210 Designated Market Areas (DMAs) and four FCC-defined areas). As a result of this change the number of respondents required to meet the requirements of Section 101.1440 decreased from 354 to 214.

OMB Control No.: 3060–1026.

Title: Section 101.1417, Annual Report.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 101.1417 requires MVDDS licensees to file with the Commission two copies of a ''license information report'' by March 1st of each year for the preceding calendar year. This annual report must include the name and address of the licensee; the station(s) call letters and primary geographic service area(s); and statistical data for the licensee's station.

With this submission, the Commission is revising this information collection because on July 7, 2003, the Commission released a Third Report and Order in ET Docket No. 98–206 (FCC 03–152) that decreased the number of MVDDS license areas from 354 Component Economic Areas (CEAs) to 214 license areas (210 Designated Market Areas (DMAs) and four FCC-defined areas). As a result of this change the number of respondents required to meet the requirements of Section 101.1417 decreased from 354 to 214.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22923 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 9, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 23, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0944.

Title: Review of Commission Consideration of Applications under the Cable Landing License Act.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 200 responses.

Estimated Time Per Response: 5–9 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,001 hours.

Total Annual Cost: $402,175.

Privacy Act Impact Assessment: N/A.

Needs and Uses: A carrier must generally obtain landing rights approval if it wants to land an undersea cable onto another country's shores. For example, if a carrier wants to land a cable upon U.S. shores, the carrier must first obtain permission from the U.S. government before it may do so. These situations are governed by the Cable Landing License Act, which gives the President of the United States broad discretion to grant, withhold, condition or revoke cable landing licenses under certain conditions. By Executive Order 10530, the Commission has been delegated responsibility for issuing cable landing licenses.

The Commission is submitting this information collection to the OMB as a revision. The Commission has implemented mandatory electronic

filing of all applications and other filings related to international telecommunications services via the user-friendly, Internet-based International Bureau Filing System (IBFS).

Additionally, the Commission plans to develop eight new cable landing license applications that impact this information collection. We do not know the specific time frame for the development of each application. However, we estimate that the projected completion date for all cable landing license applications is December 31, 2008. The development of the applications is contingent upon the availability of budget funds, human resources, and other factors. Therefore, the annual burden hours and costs are unknown at this time because the forms have not been developed by the Commission yet. Therefore, this submission to OMB does not reflect any change in the annual burden hours and annual costs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22924 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 15, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 23, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0501.

Title: Section 73.1942, Candidate Rate; Section 76.206, Candidate Rates; Section 76.1611, Political Cable Rates and Classes of Time.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 19,717.

Estimated Time per Response: 0.5 hours to 20 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Semi-annual requirement; Third party disclosure requirement.

Total Annual Burden: 984,293 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 315 of the Communications Act directs broadcast stations and cable operators to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

47 CFR 73.1942 requires broadcast licensees and 47 CFR 76.206 requires cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). These rule sections also require licensees and cable TV systems to calculate the lowest unit charge. Broadcast stations and cable systems are also required to review their advertising records throughout the election period to determine whether compliance with these rule sections require that candidates receive rebates or credits.

47 CFR 76.1611 requires systems to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22987 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 16, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 23, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0703.

Title: Determining Costs of Regulated Cable Equipment and Installation.

Form Number: FCC Form 1205.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Total Annual Burden: 50,800 hours.

Total Annual Cost: $900,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators file FCC Form 1205 to calculate costs associated with regulated equipment and installation for the basic service tier and the maximum permitted charges for such equipment and installations and to comply with 47 CFR 76.923(m). Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. 47 CFR 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–23114 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons of the last meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 29, 2003. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, December 16, 2005 beginning at 9 a.m. and concluding at 11 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, the Designated Federal Officer (DFO) at (202) 418–1096 or *Jeffery.Goldthorp@fcc.gov*. The TTY number is: (202) 418–2989.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide recommendations to the FCC and to the communications industry that, if implemented, shall under all reasonably foreseeable circumstances assure optimal reliability and interoperability of wireless, wireline, satellite, cable, and public data networks. At this sixth and last meeting under the Council's current charter, the Council will review recommendations from its focus groups, including best practices for addressing near-term E911 issues, final recommendations for next generation E911 architectures and transition issues, new best practices for improving the reliability of E911 networks and services, target network architectures for communications with emergency services personnel, and best practices for network security.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail (*Jeffery.Goldthorp@fcc.gov*) or U.S. Postal Service mail (7–A325, 445 12th St, SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/realaudio/*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22985 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2738]

Petitions for Reconsideration of Action in Rulemaking Proceeding

November 8, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by December 8, 2005. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act (MB Docket No. 05–181).

Number of Petitions Filed: 5.

Subject: In the Matter of Applications of Loral Space & Communications Ltd. (DIP) for the Transfer of Control of Licenses and Authorizations Held by Loral Orion, Inc. (DIP), Loral SpaceCom Corporation (DIP) and Loral Skynet Network Services, Inc. (DIP) to Loral Space & Communications Inc. (IB Docket No. 05–233).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–22988 Filed 11–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010168–021.

Title: New Caribbean Service Rate Agreement.

Parties: CMA CGM, S.A.; Hapag-Lloyd Container Linie GmbH; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; and Compania Sud Americana de Vapores, S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes P&O Nedlloyd Limited/P&O Nedlloyd B.V. as parties to the agreement.

Agreement No.: 011632–005.

Title: Turkey/United States Rate Agreement.

Parties: Farrell Lines, Inc. and Turkon Container Transport & Shipping, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds a new Article 18 that will terminate agreement authority effective December 16, 2005, except for the performance of existing agreement service contracts and the winding up of the affairs of the agreement.

Agreement No.: 011865–003.

Title: CMA–CGM/LT Amerigo Express/MUS Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA–CGM, S.A. and Lloyd Triestino di Navigazione S.p.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment provides for increases in vessel size and changes in the provision of vessels up to the end of 2006, and extends the agreement to June 11, 2007.

By Order of the Federal Maritime Commission.

Dated: November 18, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–23179 Filed 11–22–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Maxfreight International Logistics, Inc., 708 S. Hindry Avenue, Inglewood, CA 90301, Officers: David Yasuo Miyamoto, CEO (Qualifying Individual), Barry Chiang, Director

Five Continent Line, L.L.C., 2065 S. Escondido Blvd., #101, Escondido, CA 92025, Officer: Alycia Cerini, Managing Member (Qualifying Individual)

Logical Solution Services, Inc. dba Cruz World Shipping, 317 Brick Blvd., Brick, NJ 08723, Officers: Victor Cruz, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

International Trade Management Group, LLC, 611 Live Oak Drive, McLean, VA 22101, Officers: Lahyan Diab, Member, Isahm Diab, Member

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

World Wide International, Inc., 5900 Roche Drive, Suite LL 20, Columbus, OH 43229, Officers: Carolyn Sue Logan, President (Qualifying Individual), Melvin C. Logan, Vice President.

Dated: November 18, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–23178 Filed 11–22–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with Florida Choice Bankshares, Inc., and thereby indirectly acquire its subsidiary, Florida Choice Bank, both of Mt. Dora, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Internet Bancorp, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Internet Bank of Indiana, Indianapolis, Indiana.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FirstPerryton Bancorp, Inc., Perryton, Texas; to acquire 100 percent of the voting shares of Amarillo Western Bancshares, Inc., Amarillo, Texas, and

thereby indirectly acquire Western National Bank, Amarillo, Texas.

2. ST Banc Corp., McAllen, Texas; to become a bank holding company by acquiring 100 percent of South Texas Bancorp, Hebbronville, Texas, and thereby indirectly acquire South Texas Bancorp of Delaware, Inc., Wilmington, Delaware, and Hebbronville State Bank, Hebbronville, Texas.

Board of Governors of the Federal Reserve System, November 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6452 Filed 11–22–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MainSource Financial Group, Inc., Greensburg, Indiana; to acquire 100 percent of the voting shares of Union Community Bancorp, Crawfordsville, Indiana, and thereby indirectly acquire Union Federal Savings and Loan Association, Crawfordsville, Indiana, and thereby operate a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6453 Filed 11–22–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing a new SOR titled, ''National Disaster Medical System (NDMS) Claims Processing System (CPS), No. 09–70–0572.'' CMS is responsible for establishing and administering a payment mechanism for definitive medical care provided under the National Disaster Medical System (NDMS) in accordance with section 2811 of the Public Health Service Act, 42 United States Code (U.S.C.) 300hh-11, a Memorandum of Agreement (MOA) entered into by the NDMS Partners—the Departments of Homeland Security, Health and Human Services, Defense, and Veteran's Affairs, and an Inter-Agency Agreement between CMS and the Federal Emergency Management Agency (FEMA). Reimbursement to NDMS-participating hospitals (and practitioners furnishing medical services to NDMS-authorized patients during inpatient stays in those hospitals) for definitive medical care will be administered through the NDMS–CPS. The new system will collect data relating to individuals who receive NDMS-authorized medical treatment or services in NDMS hospitals for illness or injury resulting from a specified public health emergency or non-deferrable medical treatment or services to maintain health when such are temporarily not available as a result of the public health emergency. Data on individuals will be submitted by the Departments of Defense and Veteran's Affairs, staffed Federal Coordinating Centers activated by the NDMS, NDMS hospitals, and practitioners within NDMS hospitals that furnish medical treatment or services to NDMS patients.

The primary purpose of the system is to justify and document payments for inpatient hospital and related practitioner services provided in connection to the NDMS. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by CMS and the NDMS Partners, contractors (including the NDMS claims contractor), and consultants contracted by the Agency; (2) support another Federal (including the NDMS Partners) agency of a state government, an agency established by state law, or its fiscal agent; (3) assist NDMS-participating hospitals (and practitioners within those hospitals) who have furnished services to individuals evacuated and placed by the NDMS; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency, and (8) combat fraud and abuse in certain Federal health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 17, 2005. To ensure that all parties have adequate time in which to comment, the new SOR and the routine uses, will become effective 30 days from the publication of the notice, provided OMB grants CMS' request for a 10-day waiver of the review period, unless CMS receives comments that require alterations to this notice. If OMB does not grant CMS' request for a 10-day waiver of the review period, the new SOR and the routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was mailed

to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Chris Klots, Technical Advisor, Medicare Contractor Management Group, Center for Medicare Management, CMS, Mail Stop S1–14–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. He can also be contacted by telephone at 410–786–3348, or e-mail at *Christopher.Klots@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: The NDMS is a partnership of four Federal agencies—HHS, Department of Defense, Department of Veteran's Affairs and the Department of Homeland Security. In a disaster situation, the NDMS augments the public health and health care activities of State and local governments. NDMS has three key functions to which each of the Partners contribute: Medical response, patient evacuation, and definitive medical care.

The medical response function of NDMS relates to the deployment of NDMS response teams, comprised of trained medical and logistical personnel from the NDMS Federal Partners, to assess the health and medical needs of disaster victims and to respond to these needs and patients. The patient evacuation function of NDMS relates to the establishment of a communications, transportation and medical regulating system to evacuate patients from a mobilization center near the disaster site, to patient reception capabilities known as Federal Coordinating Centers. The Departments of Defense and Veteran's Affairs are responsible for activating and staffing the Federal Coordinating Centers. The Federal Coordinating Centers have the authority to arrange for referral and inpatient admission of NDMS-evacuated patients in acute care hospitals for definitive medical care. The definitive medical care is provided by hospitals that are part of the NDMS and have agreed to provide this inpatient care to NDMS evacuees on an as-needed basis.

CMS is responsible for establishing and administering a payment mechanism for definitive medical care provided under the NDMS in accordance with section 2811 of the Public Health Service Act, 42 U.S.C. 300hh–11, a MOA entered into by the NDMS Partners—the Departments of Homeland Security, Health and Human Services, Defense, and Veteran's Affairs, and an Inter-Agency Agreement between CMS and FEMA. Reimbursement to NDMS-participating hospitals (and practitioners furnishing medical services to NDMS-authorized patients during inpatient stays in those hospitals) for definitive medical care will be administered through the NDMS–CPS. The new system will collect data relating to individuals who receive NDMS-authorized medical treatment or services in NDMS hospitals for illness or injury resulting from a specified public health emergency or non-deferrable medical treatment or services to maintain health when such are temporarily not available as a result of the public health emergency. Data on individuals will be submitted by the Departments of Defense and Veteran's Affairs, staffed Federal Coordinating Centers activated by the NDMS, NDMS hospitals, and practitioners within NDMS hospitals that furnish medical treatment or services to NDMS patients.

The NDMS MOA defines NDMS definitive medical care as follows: to the extent authorized by NDMS in a particular public health emergency, medical treatment or services beyond emergency medical care, initiated upon inpatient admission to an NDMS treatment facility and provided for injuries or illnesses resulting directly from a specified public health emergency, or for injuries, illnesses and conditions requiring non-deferrable medical treatment or services to maintain health when such medical treatment and services are temporarily not available as a result of the public health emergency. Other provisions of the NDMS MOA make clear that NDMS coverage ends when the indicated medical treatment is completed, the patient refuses care, the patient is returned home, or thirty days elapse.

Accordingly, in order to provide expeditious processing and adjudication of NDMS definitive medical claims from NDMS hospitals and licensed providers arising from NDMS-authorized medical treatment and services for victims of a public health emergency, a contractor will collect and process NDMS patient data gathered by the Federal Coordinating Centers during the emergency evacuations against NDMS claims data, with CMS subsequently making payment on appropriate claims in keeping with NDMS policies. Subject to the availability of funds, a similar solution will be employed to address NDMS definitive medical care reimbursement requirements that may arise in future emergency situations.

I. Description of the New System of Records

A. Statutory and Regulatory Basis for the System

Authority for reimbursement of providers is found under section 102(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188, which added section 2811 of the Public Health Service Act, 42 U.S.C. 300hh–11, as transferred to the Department of Homeland Security under the Homeland Security Act of 2002, Pub. L. 107–296, 6 U.S.C. 313(5), and the Economy Act, 31 U.S.C. 1535.

B. Collection and Maintenance of Data in the System

The new system will collect data from individuals who receive treatment for services in an NDMS hospital for illness or injury resulting from a specified public health emergency or non-deferrable medical treatment or services to maintain health when such are temporarily not available as a result of the public health emergency. Patient data will be collected by the Federal Coordinating Centers and claims data on medical treatment and services furnished to NDMS-authorized patients will be reported by NDMS-participating hospitals (and practitioners within those facilities) to a CMS-contracted claims processor who will process claims under the NDMS–CPS. The system will also include, but is not limited to, name, social security number, address, dates of care, Diagnostic Related Group/Current Procedure Terminology (DRG/CPT) data, provider name, provider address, provider number, amount billed, amount allowed, other insurance payment, amount to be paid, and applicable Employer Identification Number.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release NDMS–CPS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of NDMS–CPS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; *e.g.*, to justify and document payments for inpatient hospital and related practitioner services provided in connection to the NDMS.

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the NDMS–CPS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To CMS contractors (including the NDMS claims contractor), or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing an NDMS claims processing function or other CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal agency (including any of the NDMS Partner Agencies), an agency of a State government, an agency established by State law, or its fiscal agent to:

a. contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/State Medicaid programs within the State.

Other Federal or State agencies in their administration of a Federal health program may require NDMS–CPS information in order to support evaluations and monitoring of the NDMS program, including proper reimbursement for services provided.

In addition, other State agencies in their administration of a Federal health program may require NDMS–CPS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

Disclosure under this routine use shall be used by State Medicaid agencies pursuant to agreements with the HHS for determining Medicaid eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Social Security Act (the Act), and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the State or who are residents of that State.

We also contemplate disclosing information under this routine use in situations in which State auditing agencies require NDMS–CPS information for auditing State Medicaid eligibility considerations. CMS may enter into an agreement with State auditing agencies to assist in accomplishing functions relating to purposes for this system.

3. To providers and practitioners who have furnished NDMS-authorized medical treatment and/or services to individuals evacuated and placed for NDMS definitive medical care by the NDMS.

Providers and suppliers of services may require NDMS–CPS information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the NDMS program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the NDMS program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions

exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the NDMS program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts may require NDMS–CPS information in order to provide support for the individual's entitlement to benefits under the NDMS program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of NDMS claims-related information for NDMS evacuees, including proper reimbursement of services provided.

5. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

NDMS–CPS data may be provided for research, evaluation, and epidemiological projects, in order to contribute to a broader, longitudinal, national perspective of the status of NDMS patients. CMS anticipates that many researchers may have legitimate requests to use these data in projects that could ultimately improve the care provided to disaster victims and the policy that governs the care.

6. To a Member of Congress or a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Individuals often request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information in response to the inquiry.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. the Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require NDMS-CPS information for the purpose of combating fraud and abuse in such federally-funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures:

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the

Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: November 7, 2005.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

System No. 09–70–0572

SYSTEM NAME:

''National Disaster Medical System Claims Processing System (NDMS–CPS)'' HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The new system will collect data from individuals who receive treatment for services in an NDMS hospital for illness or injury resulting from a specified public health emergency or non-deferrable medical treatment or services to maintain health when such are temporarily not available as a result of the public health emergency. Patient data will be collected by the Federal Coordinating Centers and claims data on medical treatment and services furnished to NDMS-authorized patients will be reported by NDMS-participating hospitals (and practitioners within those facilities) to a CMS-contracted claims processor who will process claims under the NDMS–CPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will include, but is not limited to, name, social security number (SSN), address, dates of care, Diagnostic Related Group/Current Procedure Terminology (DRG/CPT) data, provider name, provider address, provider number, amount billed, amount allowed, other insurance payment, amount to be paid, and applicable Employer Identification Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for reimbursement of providers is found under section 102(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, which added § 2811 of the Public Health Service Act, 42 U.S.C. 300hh–11, as transferred to the Department of Homeland Security under the Homeland Security Act of 2002, Pub. L. 107–296, 6 U.S.C. 313(5), and the Economy Act, 31 U.S.C. 1535.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to justify and document payments for inpatient hospital and related practitioner services provided in connection to the NDMS. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by CMS and the NDMS Partners, contractors (including the NDMS claims contractor), and consultants contracted by the Agency; (2) support another Federal (including the NDMS Partners), agency of a State government, an agency established by state law, or its fiscal agent; (3) assist NDMS-participating hospitals (and practitioners within those hospitals) who have furnished services to individuals evacuated and placed by the NDMS; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency, and (8) combat fraud and abuse in certain Federal health benefits programs.

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

A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the NDMS–CPS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors (including the NDMS claims contractor), or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To another Federal agency (including any of the NDMS Partner Agencies), an agency of a State government, an agency established by State law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/State Medicaid programs within the State.

3. To providers and practitioners who have furnished NDMS-authorized medical treatment and/or services to individuals evacuated and placed for NDMS definitive medical care by the NDMS.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her

eligibility for, or an entitlement to, benefits under the NDMS program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the NDMS program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

6. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. To the Department of Justice (DOJ), court or adjudicatory body when: The Agency or any component thereof, or

a. Any employee of the Agency in his or her official capacity, or

b. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

c. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. ADDITIONAL CIRCUMSTANCES AFFECTING ROUTINE USE DISCLOSURES:

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E. Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

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

STORAGE:

Computer diskette, magnetic storage media, and paper claims.

RETRIEVABILITY:

Information will be retrieved by patient's name and SSN; and may be sorted by geographical area or medical provider.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. Office of Management and Budget Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs five years from the last action on the hospital's cost report, and should be coordinated with disposal of the reports. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Medicare Contractor Management Group, Center for Medicare Management, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex,

and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Information contained in this system will be submitted by NDMS hospitals, other providers, and States.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–23239 Filed 11–22–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), title 5 U.S.C., as amended, because the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of information and the discussions would likely significantly frustrate implementation of the program.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 1–2, 2005.

Open: December 1, 2005, 8:30 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) NIH Director's Report; (2) Clinical and Translational Science Awards; (3) NIH Director's Council of Public Representatives Liaison Report; and(4) update on NIH Neurosciences Blueprint.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: December 2, 2005, 8:30 a.m. to 10 a.m.

Agenda: Office of Portfolio Analysis and Strategic Initiatives (OPASI).

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Open: December 2, 2005, 10 a.m. to 12 p.m.

Agenda: Among the topics proposed for discussion are: (1) Public Access Update; and (2) Workgroup Report on Outside Awards for NIH Employees.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Shelly Pollard, ACD Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 31 Center Drive, Building 31, Room 5B64, Bethesda, MD 20892, Phone: (301) 496–0959, *pollards@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nih.gov/about/director/acd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 7, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23188 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 13–14, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, 301–496–9767, *wm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 39.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23193 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and percent information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: December 13–14, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 28052.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301–402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23194 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applicants and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 13–14, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hasnaa Shafik, PhD, MD, Scientific Review Administrator, Division of Extramural Activities, RPRB, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8037, Bethesda, MD 20892, (301) 451–4757, *shafikh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23195 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Review Panel.

Date: December 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23192 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–32, Review R03.

Date: December 2, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Soheyla Saadi, PhD., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr. Rm 4AN32A,

National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4805, *saadisoh@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–31, Review K23.

Date: December 2, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Soheyla Saadi, PhD., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr. Rm 4AN32A, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4805, *saadisoh@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–25, Review R13.

Date: December 5, 2005.

Time: 1:15 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Crainofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 06–33, Review of RFA DE–06–004, Sjogren's Syndrome: A Model Complex Disease.

Date: February 27, 2006.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, PhD., Scientific Review Administrator, National Institute of Dental & Crainofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23189 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel International Epidemiological Databases to Evaluate AIDS (IEDEA).

Date: December 5–7, 2005.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John A. Bogdan, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616, 301–496–2550, *jbogdan@niaid,nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23190 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diet-Induced Obesity.

Date: December 2, 2005.

Time: 2:30 p.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Ongoing Research: Liver.

Date: December 5, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Ongoing Research: Liver.

Date: December 6, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Ongoing Research: Diabetes.

Date: December 8, 2005.

Time: 1 p.m. to 2:20 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver Diseases Training and Mentoring (K23 and K24).

Date: December 12, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Type 1 Diabetes Immunology.

Date: December 20, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23191 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Communication of People With Mental Retardation.

Date: December 2, 2005.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23196 Filed 11–22–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Specialized Centers in Reproduction Research.

Dates: December 5–6, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23197 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD53 (RFA–AA06–001–SBIR).

Date: December 5, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD52—Grant Application Review.

Date: December 7, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3045, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 20892–9304, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23198 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Individual Fellowships.

Date: November 29, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Child ITV Research II.

Date: November 29, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Schizophrenia Review Group.

Date: December 1, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23199 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Estrogen and Neural Pathways in Female Pain Syndromes.

Date: November 30, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884. *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.864, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23200 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Reproductive Health in Developing Countries P01 Review.

Date: December 5, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23201 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Eukaryotic Pathogens and Vectors.

Date: November 21, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692. (301) 435–1149. *elzaataf@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Technology and Surgical Sciences.

Date: November 21, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301) 435–2204. *matusr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metalloprotein Structure.

Date: November 21, 2005.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892. (301) 435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23202 Filed 11–22–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Drug Testing Advisory Board on December 13–14, 2005.

A portion of the meeting will be open and will include a roll call, general announcements, a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and a Nuclear Regulatory Commission drug testing program update.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed below as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

The Board will also meet to develop the final revisions to the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs that were published in the **Federal Register** on April 13, 2004 (69 FR 19673) and to discuss Federal agency specimen results, medical review officer interpretations, laboratory inspection issues, and analytical instrumentation issues. This meeting will be conducted in closed session since discussing these issues in open session will significantly frustrate the Department's ability to develop the revisions to the Mandatory Guidelines or to disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. The HHS Office of General Counsel made the determination that such matters are protected by exemptions (6) and 9(B) of section 552b(c) of title 5 U.S.C. and therefore may be closed to the public.

To facilitate entering the building for the open session, public attendees are

required to contact Mrs. Giselle Hersh, Division of Workplace Programs, 1 Choke Cherry Road, Room 2–1042, Rockville, MD 20857, 240–276–2605 (telephone) or by e-mail to *Giselle.Hersh@samhsa.hhs.gov.*

Substantive program information and a roster of Board members may be obtained by accessing the SAMHSA workplace Web site (*http://workplace.samhsa.gov*) or communicating with the contact whose name and telephone number are listed below. The transcript for the open session will be available on the SAMHSA workplace Web site as soon as possible after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Drug Testing Advisory Board.

Meeting Date: December 13–14, 2005.

Place: SAMHSA Building, Sugarloaf Conference Room, 1 Choke Cherry Road, Rockville, Maryland 20850.

Type: Open: December 13, 2005; 8:30 a.m.–10:30 a.m.

Closed: December 13, 2005; 10:30 a.m.–4:30 p.m.

Closed: December 14, 2005; 8:30 a.m.–Noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary, 1 Choke Cherry Road, Room 2–1033, Rockville, Maryland 20857, 240–276–2600 (telephone) and 240–276–2610 (fax), e-mail: *Donna.Bush@samhsa.hhs.gov.*

Dated: November 17, 2005.

Robert E. Stephenson,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–23155 Filed 11–22–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–23024]

International Code for the Construction & Equipment of Ships Carrying Dangerous Chemicals in Bulk—December 2005 Deadline for Manufacturers of Affected Products

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard notifies manufacturers that there is a December 31, 2005 deadline to supply missing safety or pollution data for the revised International Code for the Construction & Equipment of Ships Carrying Dangerous Chemicals in Bulk, which will affect the bulk shipment of certain products on most international voyages.

DATES: The International Maritime Organization should receive missing data no later than December 31, 2005.

ADDRESSES: Missing data can be delivered to the following address: GESAMP/EHS, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom. You may submit comments identified by Coast Guard docket number USCG–2005–23024 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Tom Felleisen, Hazardous Materials Standards Division (G–MSO–3), Coast Guard, telephone 202–267–0086. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2005–23024) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

The International Maritime Organization's (IMO) Maritime Safety Committee adopted the revised International Code for the Construction & Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) last year. Over 120 products were omitted from either Chapter 17 or 18 of the IBC Code due to missing safety and or pollution data. The 41st session of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection working group on the Evaluation of the Hazards of Harmful Substances Carried by Ships and the most recent session of the working group on the Evaluation of Safety and Pollution Hazards updated this list. IMO will exclude these products from the revised IBC Code unless it receives the missing data by December 31, 2005. If these products are excluded, shippers will be unable to carry them in bulk after January 1, 2007 on most international voyages. Therefore, the manufacturers of these products should supply the missing safety and or pollution data to the IMO GESAMP/EHS Secretariat (see **ADDRESSES**) by December 31, 2005.

This notice of an IMO action does not mean that the Coast Guard will necessarily be implementing the IMO action on all international shipments. Implementation of IMO actions would be the subject of a future rulemaking under a distinct docket.

The affected products are:

1. Acetochlor
2. Alkaryl polyethers (C9–C20)
3. Alkenyl (C11+) amide

4. Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture
5. Aluminium chloride (30% or less)/ Hydrochloric acid (20% or less) solution
6. 2-(2-Aminoethoxy) ethanol
7. 2-Amino-2-hydroxymethyl-1,3-propanediol solution (40% or less)
8. Ammonium bisulphite solution (70% or less)
9. Ammonium thiocyanate (25% or less)/Ammonium thiosulphate (20% or less) solution
10. Benzyl chloride
11. N,N-bis(2-hydroxyethyl) oleamide
12. Brake fluid base mix: Poly(2–8)alkylene (C2–C3) glycols/ Polyalkylene (C2–C10)
13. glycols monoalkyl (C1–C4) ethers and their borate esters
14. Butene oligomer
15. Butyl stearate
16. Calcium alkyl (C9) phenol sulphide/ Polyolefin phosphorosulphide mixture
17. Calcium long-chain alkaryl sulphonate (C11–C50)
18. Calcium long-chain alkyl phenolic amine (C8–C40)
19. Calcium nitrate/Magnesium nitrate/ Potassium chloride solution
20. Calcium nitrate solutions (50% or less)
21. Camphor oil
22. Caramel solutions
23. Carbolic oil
24. Cashew nut shell oil (untreated)
25. Chlorinated paraffins (C14-C17) (with 50% chlorine or more, and less than 1% C13 or shorter chains)
26. Coal tar
27. Coal tar naphtha solvent
28. Coal tar pitch (molten)
29. Cobalt naphthenate in solvent naphtha
30. Coconut oil fatty acid methyl ester
31. Creosote (coal tar)
32. Creosote (wood)
33. Cresylic acid, sodium salt solution
34. Decyl acetate
35. 1,6-Dichlorohexane
36. 2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution
37. 1,3-Dichloropropane
38. Diethylene glycol diethyl ether
39. Diethylene glycol phthalate
40. Diglycidyl ether of bisphenol
41. 1,4-Dihydro-9,10-dihydroxyanthracene, disodium salt solution
42. Diisononyl adipate
43. Dinonyl phthalate
44. Diphenylamine, reaction product with 2,2,4-Trimethylpentene
45. Diphenylmethane diisocyanate
46. Ditridecyl adipate
47. Ditridecyl phthalate
48. Dodecenylsuccinic acid, dipotassium salt solution
49. Dodecylamine/Tetradecylamine mixture
50. Dodecyl diphenyl ether disulphonate solution
51. Ethyl amyl ketone
52. N-Ethylbutylamine
53. Ethyl butyrate
54. Ethylene glycol methyl butyl ether
55. Ethylene-Vinyl acetate copolymer (emulsion)
56. o-Ethylphenol
57. Ethyl propionate
58. Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution
59. Fish solubles (water-based fish meal extract)
60. Fluorosilicic acid (20–30%) in water solution
61. Fumaric adduct of rosin, water dispersion
62. Glycerine (83%), Dioxanedimethanol (17%) mixture
63. Glycerol polyalkoxylate
64. Icosa (oxypropane-2,3-diyl)s
65. Isopropylamine (70% or less)
66. Latex, ammonia (1% or less), inhibited
67. Latex: Carboxylated styrene-Butadiene copolymer; Styrene-Butadiene rubber
68. Ligninsulphonic acid, sodium salt solution
69. Long-chain alkaryl sulphonic acid (C16–C60)
70. Long-chain polyetheramine in alkyl (C2–C4) benzenes
71. Long-chain polyetheramine in aromatic solvent
72. Magnesium long-chain alkaryl sulphonate (C11–C50)
73. Methyl heptyl ketone
74. 3-Methyl-3-methoxybutyl acetate
75. Naphthenic Acids
76. Nitroethane, 1-Nitropropane (each 15% or more) mixture
77. o- or p-Nitrotoluenes
78. Nonyl acetate
79. Octyl decyl adipate
80. Oleylamine
81. Palm kernel acid oil
82. Palm oil fatty acid methyl ester
83. Pentaethylenehexamine
84. Phosphate esters, alkyl (C12–C14) amine
85. Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
86. Poly(2–8)alkylene glycol monoalkyl (C1–C6) ether acetate
87. Polyalkylene oxide polyol
88. Polybutene
89. Polyether (molecular weight 2000+)
90. Polyethylene polyamines
91. Polyglycerin, sodium salt solution (containing less than 3% sodium hydroxide)
92. Polyglycerol
93. Polyolefin amide alkeneamine/ molybdenum oxysulphide mixture
94. Polyolefin amide alkeneamine polyol
95. Polyolefin aminoester salts (mw 2000+)
96. Poly(5+)propylene
97. Poly(tetramethylene ether) glycol (mw 600–3000)
98. Potassium chloride solution (10% or more)
99. Potassium salt of polyolefin acid
100. n-Propyl chloride
101. Propylene-Butylene copolymer
102. Propylene dimer
103. Pyrolysis gasoline
104. Rosin soap (disproportionated) solution
105. Sodium alkyl (C14–C17) sulphonates (60–65% solution)
106. Sodium aluminate solution
107. Sodium petroleum sulphonate
108. Sodium tartrates/Sodium succinates solution
109. Sulpho hydrocarbon long chain (C18+) alkylamine mixture
110. Sulphurized polyolefinamide alkene (C28–C250) amine
111. Tall oil (crude and distilled)
112. Tall oil fatty acid (resin acids less than 20%)
113. Tall oil fatty acid, barium salt
114. Tall oil soap (disproportionated) solution
115. Tallow fatty acid
116. Trimethylhexamethylenediamine (2,2,4- and 2,4,4-isomers)
117. Trimethylhexamethylene diisocyanate (2,2,4-and 2,4,4-isomers)
118. Trimethylolpropane polyethoxylate
119. Trimethyl phosphite
120. Urea/Ammonium mono- and dihydrogen phosphate/Potassium chloride solution
121. Urea formaldehyde resin solution
122. White spirit, low (15–20%) aromatic

Dated: November 17, 2005.

Howard L. Hime,

Acting Director of Standards, Marine, Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–23234 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22837]

Nationwide Automatic Identification System (NAIS); Preparation of Programmatic Environmental Impact Statement

AGENCY: U.S. Coast Guard (USCG or Coast Guard), Department of Homeland Security (DHS).

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces that it intends to prepare a Programmatic Environmental Impact Statement (PEIS) as part of the environmental planning process for the Nationwide Automatic Identification System (NAIS) project. The NAIS project, a USCG and DHS Level 1 investment and major systems acquisition, was initiated as a component of implementing the Maritime Transportation Security Act of 2002. Implementation of the NAIS, in part, involves installing Automatic Identification System (AIS) equipment and related support systems on and around communications towers or other structures along 95,000 miles of coastline and inland rivers.

The NAIS project is being conducted to provide the USCG with the capability to receive and distribute information from shipboard Automatic Identification System (AIS) equipment in order to enhance Maritime Domain Awareness (MDA). The project will provide detection and identification of vessels carrying AIS equipment approaching or operating in the maritime domain where little or no vessel tracking currently exists.

AIS is an international standard, approved by the International Maritime Organization (IMO), for ship-to-ship, ship-to-shore and shore-to-ship communication of information, including vessel position, speed, course, destination, and other data of critical interest for maritime safety and security. The information provided by this system will support national maritime interests—from the safety of ports through collision avoidance, to the safety of the nation through detection and classification of vessels when they are still thousands of miles offshore.

Publication of this notice begins a scoping process that identifies and determines the scope of environmental issues to be addressed in the PEIS. This notice requests public participation in the scoping process and provides information on how to participate.

DATES: The USCG will hold a public meeting concerning the scope of the PEIS. The public meeting will be held on Thursday, December 22, 2005, at the USCG Headquarters building in Washington, DC. The public meeting will be held from 2 p.m. to 4 p.m. and will be preceded by an open house from 1 p.m. to 2 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak.

Comments and related material must reach the Docket Management Facility by December 23, 2005.

ADDRESSES: The public meeting and open house will be held in room number 2415 of U.S. Coast Guard Headquarters (Transpoint Building), 2100 Second Street SW., Washington, DC 20593.

You may submit comments identified by Coast Guard docket number USCG–2005–22837 to the Docket Management Facility at the U.S. Department of Transportation (DOT). To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please call or e-mail Mr. David Wiskochil, NAIS Project Support Team, at 202–475–3118 or *dwiskochil@comdt.uscg.mil,* respectively. If you have questions on viewing or submitting material to the docket, please call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, at 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard requests public comments and other relevant information on environmental issues related to the proposed NAIS project. The scheduled public meeting is not the only opportunity you have to comment. In addition to or instead of providing comments at the meeting, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). The USCG will consider all comments and material received during the comment period.

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. The USCG has an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2005–22837) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. The USCG will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting and Open House

The Coast Guard invites you to learn about the proposed NAIS project at an informational open house, and to identify and comment on environmental issues related to the proposed program at a public meeting. Your comments will help the Coast Guard identify and refine the scope of the environmental issues to be addressed in the PEIS.

In order to allow everyone a chance to speak at the public meeting, the Coast Guard may limit speaker time, or extend the meeting hours, or both. When you rise to speak, you must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

The USCG's public meeting location at USCG Headquarters is wheelchair-accessisble. If you plan to attend the

open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Background and Purpose

The Maritime Transportation Security Act (MTSA) of 2002 (46 U.S.C. 70113) directed the Secretary of the Department of Homeland Security to ''implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States.'' Furthermore, Congress appropriated funds to the Coast Guard for ''the acquisition and installation * * * of the shore-based universal AIS coverage system in ports nationwide.'' The Coast Guard will implement such a system in support of MDA through the proposed NAIS project.

AIS is an international standard (International Telecommunications Union Recommendation ITU–R M. 1371–1) for ship-to-ship, ship-to-shore and shore-to-ship communication of information, including vessel position, speed, course, destination and other data of critical interest for maritime safety and security. AIS equipment is required domestically and internationally aboard major commercial vessels. AIS is a communication system that relies upon vessels to properly transmit their position, identification, speed, and other navigational information.

Certain vessels are currently subject to carriage requirements for AIS equipment. Despite the nation's critical homeland security need to track these vessels, USCG does not have the network of receivers and transmitters necessary to capture, display, and use this AIS information except in a few select port areas. The information provided by this system will support all of the nation's maritime interests—from the safety of ports through collision avoidance, to the safety of the nation through detection and classification of vessels when they are still thousands of miles offshore. The NAIS project will provide the United States with the ability to fully utilize the IMO international standard and requirements outlined in MTSA of 2002.

Although mandated by Congress, consideration of the NAIS project includes analysis of the proposed project's natural and human environmental impacts. The Coast Guard is the lead agency for determining the scope of this review, and in this case the Coast Guard has determined that review must include preparation of a PEIS. This notice of intent is required by 40 CFR 1508.22, and briefly describes the proposed action and possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the PEIS to the Coast Guard NAIS Project Office (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The Proposed Action to be analyzed in the PEIS is the broad scope of implementation of the NAIS project. The PEIS will provide a general level of analysis of alternatives and environmental impacts because specific implementation sites and methods are not currently known. The PEIS will serve as a top tier environmental analysis of the general project of installing a nationwide AIS-based vessel detection, identification, tracking and communication system. Following completion of the PEIS, the USCG will conduct site-specific environmental analysis coincident with project implementation, once specific sites become known. The following alternatives for establishing shore-based antenna sites (e.g., towers) will be evaluated in the PEIS: Use of existing or currently proposed government sites; Lease of commercial sites; Construction of new sites. The preferred alternative is to implement a combination of the shore-based antenna site alternatives. The PEIS will also discuss the No Action Alternative as required under NEPA.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the PEIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the Coast Guard has completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing PEIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the PEIS;
- Other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the proposed program; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard will prepare a draft PEIS, and will publish a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the Coast Guard Project Office point of contact identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the draft PEIS. Additionally, the Coast Guard anticipates holding a public meeting in May, 2006 in Washington, DC to present the draft PEIS and receive public comments regarding the document. The Coast Guard will consider all comments received and then prepare the final PEIS. As with the draft PEIS, the Coast Guard will announce the availability of the final PEIS and once again give you an opportunity for review and comment.

Summary of the Proposed NAIS Project

The general NAIS concept of operations is to provide AIS functionality in support of all national maritime missions, particularly navigation safety and maritime security. NAIS is expected to consist of a system of AIS receivers, transmitters, transceivers, repeaters and other equipment located on shoreside installations and remote platforms potentially including buoys, offshore platforms, aircraft and spacecraft as needed to receive, distribute, and use the information transmitted by vessels that operate AIS equipment and transmit data to these vessels.

NAIS will send and receive AIS messages, via a very high frequency (VHF) data link, to and from AIS equipped vessels, Aids to Navigation, and search and rescue (SAR) aircraft. Nationwide AIS will leverage several types of platforms to support AIS receive and transmit infrastructure. While some support receive-only capabilities (e.g., satellites, buoys, and aircraft), others may support receive and transmit capabilities (e.g., towers and platforms). AIS message data will be transported between system components over a wide-area network (WAN) and diverse, remote site connectivity (e.g., leased analog circuits, microwave).

NAIS will process (e.g., validate, filter, etc.) and store the data. Some NAIS functions may be implemented by enhancing existing systems. These systems, while not part of NAIS, are included in the context of the systems' operations. Primarily, it is expected that these systems (e.g., Ports and Waterways Safety System [PAWSS], Sector Command Centers [SCC], Maritime Information Safety and Law Enforcement [MISLE], Vessel Traffic Services [VTS]) will provide data processing functions (e.g., vessel tracking correlation, intelligence processing, anomaly detection) and user interfaces necessary to meet all the requirements for fully using AIS data. Some users of NAIS capabilities (e.g., Deepwater assets and other government agencies) may indirectly access AIS data via other systems.

NAIS will complement other surveillance and intelligence systems greatly aiding the essential process of identifying vessels requiring further investigation and action. NAIS information will be displayed in the USCG national maritime COP and shared, along with correlated data and intelligence as appropriate, with other DHS and federal agencies. Unclassified portions of the COP will also be available to local port partners in support of security and safety operations. This information will be invaluable to agencies, such as Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA), as it will provide real-time location data on all major cargo and other commercial vessels in the maritime domain.

Dated: November 9, 2005.

J.P. Currier,

Rear Admiral, United States Coast Guard, Assistant Commandant for Acquisition.

[FR Doc. 05–23233 Filed 11–22–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, 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 proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of the Emergency Management Institute Resident Course Evaluation Form which is used to identify problems with course materials, evaluate the quality of course delivery, facilities and instructors.

SUPPLEMENTARY INFORMATION: The Emergency Management Institute (EMI) develops courses and administers resident and nonresident training programs in areas such as natural hazards, technical hazards, instructional methodology, professional development, leadership, exercise design and evaluation, information technology, public information, integrated emergency management, and train-the-trainer. A significant portion of the training is conducted by State emergency management agencies under cooperative agreements with FEMA.

In order to meet current information needs of EMI staff and management, the EMI uses this course evaluation form to identify problems with course materials, delivery, facilities and instructors. This is a resident evaluation form. EMI staff will use the information to monitor and recommend changes in course materials, student selection criteria, training experience, and classroom environment. Reports will be generated and distributed to EMI management and staff. Without the information it will be difficult to determine the need for improvements and the degree of student satisfaction with each course.

The respondents are students attending EMI resident courses at either the National Emergency Training Center (NETC) or at an off-site location. The evaluation form will be administered at the end of the course and will take no more than 10 minutes to complete. Contractors will scan the evaluation forms and generate the data reports using a computer program developed by a FEMA program analyst contractor. Evaluation forms are destroyed in accordance with FEMA's records retention schedule.

Collection of Information

Title: Emergency Management Institute Residential Course Evaluation Form.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0034.

Form Number: 95–41.

Abstract: Students attending the Emergency Management Institute resident program courses at FEMA's NETC will be asked to complete a course evaluation form. The information will be used by EMI staff and management to identify problems with course materials, evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local, or Tribal Government, Individuals or Households, and Federal Government.

Estimated Total Annual Burden Hours: 1,671 hours.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (minutes) (C)	Annual burden hours (A x B x C)
95–41	10,027	Per course	10	1,671
Total	10,027		10	1,671

Estimated Cost: There is no cost to respondents for this information collection.

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: Contact Laurie Wivell, Training Support Specialist, Emergency Management Institute, (301) 447–1216 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: November 3, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–23132 Filed 11–22–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, 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 proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning insurance companies that seek to participate in the National Flood Insurance Program (NFIP), Write Your Own (WYO) Program.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency may enter into arrangements authorized by the National Flood Insurance Act of 1968 as amended (the Act) under the Writer Your Own Program (WYO) with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practice. To ensure that a company seeking to return or participate in the WYO program is qualified, FEMA is requiring a one-time submission of information to determine the company's qualifications, as set forth in 44 CFR 62.24.

Collection of Information

Title: Write Your Own (WYO) Company Participation Criteria; New Applicant.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0038.

Form Numbers: None.

Abstract: The Federal government is a guarantor of flood insurance coverage issued under the WYO arrangement. To determine eligibility for participation in the WYO program, the NFIP requires a on-time submission of data demonstrating insurance companies qualification.

Affected Public: Business or Other For Profit.

Estimated Total Annual Burden Hours:

FEMA activity	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
WYO Criteria	5	1	7	35
Total	5	1	7	35

Estimated Cost: There is no cost to insurance companies for this collection of information.

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: Contact Claudia Murphy, Program Analyst, Mitigation Branch, (202) 646–2775 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: November 3, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–23133 Filed 11–22–05; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, 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 concerning the use of a census form to collect data for the development of a national fire department database.

SUPPLEMENTARY INFORMATION: The U.S. Fire Administration (USFA) receives many requests from fire service organizations and the general public for information related to fire departments, including total number of departments, number of stations per department, population protected, and number of firefighters. The USFA also has a need for this information to guide programmatic decisions, and produce mailing lists for USFA publications. Recommendations for the creation of the fire department database came out of a Blue Ribbon Panel's review of the USFA—initiated by former FEMA Director James Lee Witt in the spring of 1998. The report included a review of the structure, mission and funding of the USFA, future policies, programmatic needs, course development and delivery, and the role of the USFA to reflect changes in the fire service. The panel included 13 members of the U.S. fire community. As a result of those recommendations, the USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities of fire departments Nationwide. In the first year of this effort, information was collected from 16,000 fire departments. Since the first year of the collection, an additional 8,000 departments have registered with the census for a total of 24,000 fire departments. This leaves an estimated 9,000 departments still to respond.

Collection of Information

Title: National Fire Department Census.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0070.

Abstract: Many data products and reports exist that contain fragmented or estimated information about fire department demographics, and capabilities, but there is no single reference source today that aggregates this data to provide a complete and accurate profile of fire departments in the United States. The U.S. Fire Administration (USFA) receives many requests for information related to fire departments, including total number of departments, number of stations per department, population protected, apparatus and equipment status. The USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities. The database will be used by USFA to guide programmatic decisions, provide the Fire Service and the public with information about fire departments, to produce mailing lists for USFA publications and other materials. In the first year of this effort, information was collected from 16,000 fire departments. Since the first year of the collection, an additional 8,000 departments have registered with the census for a total of 24,000 fire departments. This leaves an estimated 9,000 departments still to respond. Additionally, fire departments already registered with the census will be contacted once every five years to provide updates or changes to their census data so that USFA can keep the database as current as possible. Fire departments are able to complete the census form on-line through the USFA web site, or by filling out a paper census form and faxing the completed form, or sending it in a return envelope.

Affected Public: Federal, State, local government, volunteer and industrial fire departments.

ESTIMATED TOTAL ANNUAL BURDEN HOURS

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
	9,000	1	25 Minutes (.42)	3,750
Total	9,000	1	25 Minutes (.42)	3,750

Estimated Cost: The estimated costs to the government will be contracted direct labor and associated overhead costs of $50,000. There would be no costs to the respondent other than the minimal direct labor cost of a single firefighter or emergency service worker taking a small amount of time to complete the census form and this would be applicable only to those fire departments and emergency service agencies with career employees. The majority of the respondents will be from volunteer fire departments for which no direct labor costs will be incurred. The estimate of respondent costs for those career departments is computed as follows: Estimated number of census forms multiplied by the national median hourly rate of a firefighter of $17.42 multiplied by .42 (representing the estimated 25 minutes it takes to complete the census form) and multiply that by .27 which represents the percentage of respondents who are career (paid) personnel. Using this equation, total estimated costs to respondents of $17,779 is derived (9,000 estimated census forms x $17.42 = $156,780 x .42 = $65,848 x .27 = $17,779). The average cost per census form is a minimal $1.96. The respondents are under no obligation to complete the census form and may refuse to do so or stop at any time so the average cost to the respondent of $1.96 could easily not be incurred by refusing to fill out the census form.

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, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Gayle Kelch, Statistician, United States Fire Administration, National Fire Data Center (301) 447–1154 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: FEMA-Information-Collections@dhs.gov.

Dated: November 15, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–23134 Filed 11–22–05; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, 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 proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the community inspection report, which is the subject of this information collection submission. The community inspection report will be used in the implementation of the inspection procedure in the Monroe County, the City of Marathon, and the Village of Islamorada, Florida and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other communities in Monroe County that incorporate after January 1, 1999 verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM), referred to as Post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk.

SUPPLEMENTARY INFORMATION: The community inspection report, which is the subject of this information collection submission, will be used in the implementation of the inspection procedure in the Monroe County, the City of Marathon, and the Village of Islamorada, Florida and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other communities in Monroe County that incorporate after January 1, 1999 verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM), referred to as Post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk.

The National Flood Insurance Program (NFIP) was established by the National Flood Insurance Act of 1968 (Pub. L. 90–448), as amended. The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and the National Flood Insurance Reform Act of 1994 (Pub. L. 103–325) made significant changes to the program. The primary purposes of the NFIP are to: (1) Better indemnify individuals for flood losses through insurance; (2) reduce future flood damages through state and community floodplain management regulations; and (3) reduce federal expenditures for disaster assistance and flood control. The NFIP makes Federally-backed flood insurance coverage available only in those communities that adopt and enforce a floodplain management ordinance to regulate new development in flood hazard areas. Over 19,000 communities participate in the NFIP.

The concept behind the program is that the communities would join the NFIP to make their citizens eligible to purchase subsidized flood insurance for existing buildings. It was recognized that insurance for many of these buildings would be prohibitively expensive if the premium were not subsidized. It was also recognized that most of these flood prone buildings were built by individuals that did not have sufficient knowledge of the hazard to make informed decisions.

In exchange for the availability of this subsidized insurance, communities would protect new construction through adoption and enforcement of community floodplain management ordinances. Owners of these new buildings (those built after the Federal Emergency Management Agency (FEMA) had identified flood hazards in the community) would pay actuarial rates for flood insurance that fully reflect the risk to the building.

Community floodplain management regulations require that residential buildings be elevated to or above the elevation of the base flood (the flood that has a 1 percent chance of occurring during any given year, also known as the 100-year flood). Non-residential buildings can either be elevated or flood proofed (made watertight) to the base flood. Without community oversight of building activities and development in the floodplain, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Community enforcement of a floodplain management ordinance is critical in protecting a building from future flood damages, in reducing taxpayer funded disaster assistance, and also in keeping flood insurance rates affordable.

The purpose of the inspection procedures is to require owners of insured buildings (policyholders) to obtain an inspection from community floodplain management officials and submit a community inspection report as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. The community inspection report, which is the subject of this information collection submission, will materially assist in reducing the number of buildings at risk to flood losses. The inspection procedure has two major purposes: (1) To help the pilot

communities for this inspection procedure, Monroe County, City of Marathon, and the Village of Islamorada, Florida, and any community that incorporates after January 1, 1999 verify that structures in their communities (those built after the effective date of the FIRM, or post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk. Post-FIRM construction is charged an actuarial rate that must fully reflect the risk of flooding. The community inspection report will be needed to effectively implement the inspection procedure. The community inspection report will be used to document whether the insured building is in compliance with the community's floodplain management ordinance. The inspection report will also assist FEMA to ensure that property owners are paying flood insurance premiums commensurate with their flood risk.

Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, all new construction and substantial improvements of structures in A Zones on the community's FIRM must have any enclosed areas below the lowest floor of an elevated building designed to include openings to equalize hydrostatic flood pressure on exterior walls by allowing for the automatic entry and exit of floodwaters. In V Zones, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with open wood lattice-work, insect screening, or non-supporting breakaway walls, intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. In both A and V Zones on the community's FIRM, the area below the lowest floor of an elevated building can only be used for parking of vehicles, building access, or storage.

In addition, owners must build the area below the lowest floor of an elevated building using flood resistant materials and must use construction methods and practices that minimize flood damages. Owners must also build with electrical, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

FEMA conducted a Community Assistance Visit (CAV) in Monroe County, Florida, in 1982, 1987, and in 1995. The purpose of a CAV is to assess an NFIP community's floodplain management program and to provide whatever assistance the community needs to administer its floodplain management ordinance effectively when program deficiencies or violations are identified. One of the more serious problems that FEMA identified through the CAVs was the apparent widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking of vehicles, building access, or storage. Follow-up contacts with Monroe County had indicated that it was unable to identify possible violations and remedy violations identified.

There are several factors that have limited Monroe County's ability to determine whether a building with an enclosure complies with the county's floodplain management ordinance: (1) A provision in Florida laws exempts ''owner-occupied family residences'' from the administrative warrant inspection procedure provided under State law for identifying building-safety issues. Under Florida State law, entry by local officials into owner-occupied single family homes without consent of the owner requires a search warrant, which is extremely difficult to obtain. (2) It is often difficult from the street to determine whether the enclosed area below an elevated building contains uses other than parking of vehicles, building access, or storage. Although the County can seek consent and approval of the owner to inspect their property, the community has had limited success in identifying violations using this method. (3) The volume of possible violations is also a contributing factor in the community's ability to address this problem. Monroe County estimated that there are several thousand buildings with illegal enclosures below the lowest floor of an elevated building. Consequently, the community has had little success in identifying possible violations so that it could then require actions to remedy the violations to the maximum extent possible.

Given these circumstances, Monroe County indicated its interest in participating in an inspection procedure. In January 1997, a Monroe County Citizen's Task Force, which was appointed by the Monroe County Board of County Commissioners to address the issue of illegal enclosures below the lowest floor of an elevated building, recommended establishment of a procedure to require an inspection and a compliance report prior to the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that insured buildings in the Special Flood Hazard Area under the NFIP comply with the County's floodplain management ordinance.

The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a separate participating NFIP community on October 1, 1998. The Village of Islamorada encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

The City of Marathon incorporated as a separate community within Monroe County on November 2, 1999 and became a separate participating NFIP community on October 16, 2000. The City of Marathon encompasses 12 miles of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the City of Marathon, the community indicated its interest in participating in the pilot inspection procedure in a resolution titled, ''A Resolution of the City Council of the City of Marathon, Florida, Providing for Approval of the City's Participation in the National Flood Insurance Program's Pilot Inspection Program and Providing for an Effective Date'', which was passed and adopted on September 13, 2000.

An interim final rule was published in the **Federal Register** on March 8, 2002 (67 FR 10631) that amended the NFIP regulations to clarify that areas of Monroe County that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance must participate in the inspection procedures as a condition of joining the NFIP. This requirement was specifically stated in the supplementary of the proposed rule (published in the **Federal Register** on May 5, 1999, 64 FR 24256) and in the final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) establishing the inspection procedure. However, this requirement was not clearly stated in the Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61, the endorsements to the Standard Flood Insurance Policy. The interim final rule amended 44 CFR 59.30 and the appendices to make clearer that participation in the inspection

procedures is a requirement for any area within Monroe County that incorporates on or after January 1, 1999. FEMA will publish notices in the **Federal Register** when communities in Monroe County incorporate, agree to implement the pilot inspection procedure, and become eligible for the sale of flood insurance.

Due to the fact that there has been widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking of vehicles, building access or storage, the community inspection report will materially assist the communities in identifying and remedying the violation, thereby reduce the number of buildings exposed to significant flood losses. Furthermore, the collection of information will help FEMA ensure that the policyholders of buildings with illegal enclosures are paying premiums commensurate with their flood risk.

The inspection procedure will be conducted in the communities of Monroe County, City of Marathon, the Village of Islamorada, and any other community in Monroe County that incorporates after January 1, 1999. FEMA would make any decision to implement the inspection procedure in NFIP participating communities outside Monroe County only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine how effective the procedure is in achieving NFIP building compliance. Implementation of the inspection procedure beyond Monroe County would require separate rulemaking and preparation of supporting materials for Paperwork Reduction Act submissions.

Collection of Information

Title: Inspection of Insured Structures by Communities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0045.

Abstract: The purpose of the inspection procedure and need for the community inspection report is to:

(1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other community in Monroe County that incorporates after January 1, 1999 verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and

(2)To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to the increased exposure to flood damages.

The final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) and the interim final rule (published in the **Federal Register** on March 8, 2002, 67 FR 10631) established an inspection procedure in Monroe County, City of Marathon, the Village of Islamorada, Florida and any other community in Monroe County that incorporates after January 1, 1999 that would be built around the flood insurance policy renewal process. The requirement that a building be inspected by the community, as a condition of renewing the flood insurance policy on the building, would only apply to NFIP insured buildings in Special Flood Hazard Areas that are identified as possible violations by the community in which the property is located. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, referred to as the 100-year flood.

Policyholders that have a flood insurance policy with a renewal effective date on and after the implementation date of the pilot inspection procedure would receive, along with their policy renewal notice, an endorsement established in Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the endorsement established in Appendices (A)(4), (A)(5), and (A)(6). The endorsement amended all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County, City of Marathon, and the Village of Islamorada, Florida (there are approximately 28,771 flood insurance policies in these communities at the time of this submission). Pre-FIRM insured buildings are included for the endorsement since there may be some policies within this category that should be rated post-FIRM because they were misrated or substantially improved after the effective date of the community's FIRM. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the Standard Flood Insurance Policy regarding the inspection procedure.

Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations and forward the list to FEMA. There are an estimated 2,000–4,000 number of insured buildings within the three communities that may be subject to an inspection based on the identification as possible violations. This estimate was reported to FEMA from the communities. Based on FEMA's review of floodplain development in these communities, FEMA is comfortable with this estimate.

Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations through a review of the pre-FIRM and post-FIRM flood insurance policies provided by FEMA and from a visual street inspection of the building, from tax records, and through a review of other documents on file in the community pertaining to the property and through other community procedures. For buildings identified by Monroe County, City of Marathon, and the Village of Islamorada as possible violations, the insurer of the flood insurance policy would send a notice to policyholders approximately 6 months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and submit the results of the property inspection as part of the renewal of the flood insurance policy by the end of the renewal grade period (30 days after date of the policy expiration). The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45 to 60 days before the policy expires.

The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection report. The community would provide two copies of the inspection report to the policyholder.

If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the insurance policy for rerating upon review of the community inspection report. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk. If the community's inspection found a violation, the community would undertake an enforcement action in accordance with its floodplain management ordinance.

If the policyholder did not obtain an inspection and submit an inspection report with the renewal premium

payment by the end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. The insurer would send a notice to the insured that the flood insurance policy expired and cannot be re-issued without the community inspection report.

The communities will not be using a FEMA designed form in documenting the inspection of an insured structure. FEMA consulted with local officials from the communities participating in the inspection procedure on the type of existing building inspection reports they use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building's flood insurance policy needs to be rerated by insurer.

The community inspection report is critical to the effective implementation of the inspection procedure. Without the inspection procedure, the Village of Islamorada, City of Marathon, and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance and as a result, both communities would be unable to undertake appropriate actions to remedy the violations. There are several potential serious consequences if these structures continue to be in violation of the community's floodplain management ordinance.

Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation (elevation of the 100-year flood) significantly increases the flood damage potential to the area below the lowest floor of the elevated building. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk.

Furthermore, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under Article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. FEMA does not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture. In 1983, FEMA limited the coverage for enclosed areas below elevated buildings due to the financial losses experienced in the NFIP when FEMA provided full coverage in these areas. Consequently, property owners and residents that may live in these lower enclosed areas may have significant uninsured losses in the event of a flood for finished items and contents below the lowest floor.

However, in spite of the limited coverage afforded for these enclosed areas, they do affect the rating of the policy. Because of the increase in flood damage potential to the building resulting from flood forces being transferred to the elevated portion of the building, the damage potential must be recognized in the rates by adding rate loadings based on the size of the enclosure. In addition, the rates must also reflect whether the enclosure contains essential building elements which are covered, namely, sump pumps, well water tanks and pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, stairways and staircases attached to the building, and foundation elements that support the building. The collection of information from the policyholder in the inspection procedure will ensure that the policyholders of buildings with enclosures are paying premiums commensurate with their flood risk.

Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will be faced with costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Under the inspection procedure, the policyholder will be required to obtain an inspection in order to renew the policy. This will be a one-time collection of information during the period of time for which the inspection procedure is to be implemented. Since the primary purpose of the inspection is to provide communities with a mechanism to ensure compliance with the floodplain management ordinance and for FEMA to verify flood insurance rates, less frequent collection of the information through the inspection report is not possible.

Affected Public: Individuals or households and business or other for-profit.

Estimated Total Annual Burden Hours: We expect a total of 2,000 to 4,000 respondents (policyholders) to obtain an inspection from the community in which the property is located. This is the total estimated number of insured buildings that are possible violations of the community's floodplain management ordinance in Monroe County, City of Marathon, and the Village of Islamorada. The burden hours are calculated based on the maximum number of estimated respondents (4,000 insured buildings). Monroe County, City of Marathon, and the Village of Islamorada will identify which insured buildings are possible violations of the community's floodplain management ordinance. It is anticipated that the inspection procedure will be implemented over a multi-year period in each community in order to inspect several hundred insured buildings identified as possible violations each year.

It is estimated that Monroe County will inspect 500–700 insured buildings per year, the City of Marathon will inspect 200–400 insured buildings per year, and the Village of Islamorada will inspect 200–400 insured buildings per year.

The policyholders of insured buildings identified as possible violations by the community will receive a notice from their insurer approximately 6 months before the policy expiration date. This notice will state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after date of the policy expiration). In addition, for each of the 2,000–4,000 insured buildings identified as a possible violation of the community's floodplain management ordinance, the following will apply:

- The policyholder will receive a reminder notice from the insurer regarding the inspection with the Renewal Notice about 45 to 60 days before the policy expires.
- The policyholder is responsible for contacting the community to arrange for an inspection by a local official in the community in which the property is located.
- The policyholder will receive two copies of the inspection report from the community and submit one copy of the inspection report as part of the policy renewal process, which includes the payment of the premium.

• If the policyholder did not obtain an inspection and submit an inspection report with the renewal payment by the end of the renewal grade period (30 days after date of expiration), the flood insurance policy would not be renewed. The insurer would send a notice at expiration or shortly thereafter to the policyholder that the flood insurance policy expired and cannot be re-issued without the community inspection report.

The flood insurance renewal notice and flood insurance application have previously been approved by OMB (OMB 1660–0045).

Number of respondents/Type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices) ..	1000
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (Note: In any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspect compared to an insured building that is non-compliant.	1	1–2.5 hours**	10,000
4,000 policyholders submit a copy of the inspection report with the renewal premium payment. 800 estimated no. of respondents that did not obtain an inspection. These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.)	1 1	8 minutes ..... 8 minutes	533 107
*Total number of Burden Hours to implement the inspection procedure over a multi-year period.			11,640
Annual (one-time) total burden hours for each policyholder is approximately.			3
Total annual burden for approximately 500–700 inspections per year in Monroe County.			2,100
Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada.			1,200
Total annual burden for approximately 200–400 inspections per year in the City of Marathon.			1,200

**FEMA has estimated that the amount of time to contact the community to arrange for the inspection and for the policyholder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.

*It is estimated that 2,000–4,000 buildings will need to be inspected over a multi-year period. On an annual basis, it is estimated that 900–1,500 buildings will be inspected each year when you combine the estimated annual inspections to be conducted by each community. The total number of inspections would not change with the incorporation of any community within Monroe County that joins the National Flood Insurance Program and agrees to participate in the inspection procedure after January 1, 1999. The estimated total number of inspections (2,000–4,000) remains the same. The addition of any other community only offsets the total number, burden hours, and costs in Monroe County.

Estimated Cost: Communities generally charge a fee for permits and inspections as part of their administration of their zoning ordinance, building code, and floodplain management ordinance. It is estimated that it will cost the policyholder on average between $35 to $50.00 for each inspection. There may be expenses related to telephone calls and arranging for someone to be available at the property so that local officials can inspect the building. These expenses are estimated to be on average $15.00 per respondent. Therefore, policyholders who are required to obtain an inspection as a condition of renewing the flood insurance policy and who obtain that inspection, it is estimated to cost on average $65.00 per policyholder. For approximately 900 to 1,500 inspections per year, the total annual cost burden to respondents is estimated to be between $58,500 and $97,500.

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, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Rachel Sears, Program Specialist, Mitigation Division, (202)646–2977 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: November 3, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–23135 Filed 11–22–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0113; Information Collection in Support of Grants Programs Authorized by the Neotropical Migratory Bird Conservation Act (Pub. L. 106–247, 14 Stat. 593)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) have sent a request to OMB to renew approval for our information collection associated with the Neotropical Migratory Bird Conservation Act (NMBCA) grants program. The current OMB control number for this information collection is 1018–0113, which expires November 30, 2005. We have requested that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before December 23, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements or explanatory information, contact Hope Grey, Information Collection Clearance Officer, at the above addresses or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Federal agencies 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.

On July 29, 2005, we published in the **Federal Register** (70 FR 43900) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending September 27, 2005. We did not receive any comments regarding this notice.

The NMBCA establishes a matching grants program to fund projects that promote the conservation of neotropical migratory birds in the United States, Latin America, and the Caribbean. The purposes of NMBCA are to: (1) Perpetuate healthy populations of neotropical migratory birds; (2) assist in the conservation of these birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and (3) provide financial resources and foster international cooperation for those initiatives. Principal conservation actions supported by NMBCA are protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of neotropical migratory bird habitat; research and monitoring; law enforcement; and community outreach and education.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations, project resources, future benefits, and other characteristics, to meet the standards established by the Fish and Wildlife Service and the requirements of NMBCA. The information collection for this program is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Materials that describe the program and assist applicants in formulating project proposals are available on our Web site at *http://www.fws.gov/birdhabitat/*. Persons who do not have access to the website may obtain instructional materials by mail by contacting the Service's Division of Bird Habitat Conservation. There has been little change in the scope and general nature of these instructions since OMB first approved this information collection in 2002. Instructions assist applicants in formulating detailed project proposals for consideration by a panel of reviewers from the Fish and Wildlife Service. These instructional materials are the basis for this information collection request.

We publish notices of funding availability annually on the Grants.gov Web site (*http://www.grants.gov*) as well as in the Catalog of Federal Domestic Assistance (*http://cfda.gov*). We use information collected under this program to respond to such needs as audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application for Federal Assistance), assistance awards, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, congressional inquiries, and reports required by NMBCA.

If the information were not collected, we would have to eliminate the program because it would not be possible to determine eligibility and the relative worth of the proposed projects. Reducing the frequency of collection would only reduce the frequency of grant opportunities as the information collected is unique to each project proposal. Discontinuation of the program is not a viable option.

Title: Information Collection in Support of Grants Programs Authorized by the Neotropical Migratory Bird Conservation Act (Pub. L. 106–247; 14 Stat. 593).

OMB Control Number: 1018–0113.

Form Number(s): None.

Frequency of Collection: Occasional. This grants program has one project proposal submission per year. Annual reports are due 90 days after the anniversary date of the grant agreement. Final reports are due 90 days after the end of the project period. The project period is up to 2 years.

Description of Respondents: (1) An individual, corporation, partnership, trust, association, or other private entity; (2) an officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government: (3) a State, municipality, or political subdivision of a State; (4) any other entity subject to the jurisdiction of the United States or of any foreign country; and (5) an international organization.

Number of Respondents: 160 submit grant applications; 60 submit required reports.

Annual Burden: 70 hours per application; 30 hours per report.

Total Annual Burden Hours: 13,000.

We again invite your comments on: (1) Whether or not the collection of information is necessary for the proper performance of the NMBCA grants programs, including whether or not in

the opinion of the respondent the information has practical utility; (2) the accuracy of our estimate of the annual hour burden of information requested; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: November 17, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–23172 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0120; Federal Subsistence Regional Advisory Council Member Application/ Nomination and Interview Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) plan to request that OMB renew approval for our information collection associated with the recruitment of Federal Subsistence Regional Advisory Council members. The current OMB control number for this information collection is 1018–0120, which expires February 28, 2006. We will request that OMB renew approval of this information collection for a 3-year term.

DATES: You must submit comments on or before January 23, 2006.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirement, explanatory information, or related forms, contact Hope Grey at the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). Federal agencies 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.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) designates the Departments of the Interior and Agriculture as the key agencies responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. These responsibilities include the establishment of Federal Subsistence Regional Advisory Councils (Regional Councils) with members from each region who are knowledgeable about the region and subsistence uses of the public lands. Membership on the Regional Councils includes subsistence use and sport/commercial use representatives and is one way for the public to become involved in the Federal regulatory process.

Based upon recommendations of the Federal Subsistence Board, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, appoints members to the Regional Councils. One-third of the seats on the Regional Councils become vacant each year. Additional vacancies may occur due to resignations or deaths of sitting members. We recruit and screen applicants to help the Federal Subsistence Board develop a list of recommended appointments for consideration by the Secretary of the Interior. We use three forms to collect information during the recruitment process: FWS Form 3–2321 (Regional Council Membership Application/ Nomination), FWS Form 3–2322 (Regional Council Candidate Interview), and FWS Form 3–2323 (Regional Council Reference/Key Contact Interview). We no longer use Form 7-FW5 (Federal Subsistence Regional Advisory Council Membership Nomination).

Title: Federal Subsistence Regional Advisory Council Member Application/ Nomination and Interview Forms.

OMB Control Number: 1018–0120.

Form Numbers: FWS Form 3–2321, FWS Form 3–2322, and FWS Form 3–2323.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Form No.	Number of annual responses	Average burden hour per response	Total annual burden hours
FWS Form 3–2321	100	2	200
FWS Form 3–2322	100	.5	50
FWS Form 3–2323	400	.25	100
Total	600	.....	350

Each person desiring to serve on a Regional Council must complete FWS Form 3–2321. Persons nominating other individuals for membership must also complete this form. Applicants provide information on (1) their knowledge of fish and wildlife resources as well as subsistence and other uses of the resources; (2) their service on working groups, conservation committees, etc.; (3) how they would represent the people in the region; and (4) their willingness to travel and attend meetings. In addition, applicants must provide three references.

Federal staff use FWS Form 3–2322 to conduct applicant interviews by telephone. Respondents do not see the printed form. Interviewers will ask questions regarding the applicant's willingness to serve on the Regional Council and will ask applicants to explain information provided on FWS Form 3–2321.

Federal staff use FWS Form 3–2323 (Regional Council Reference/Key Contact Interview Form) to conduct interviews of references/key contacts for prospective Regional Council members. We conduct all interviews by telephone and the respondents do not see the printed form. Interviewers will ask questions about the applicant's (1) knowledge of fish and wildlife resources as well as subsistence practices and commercial/sport activities; (2)

leadership ability; and (3) ability to communicate.

The Federal Subsistence Board uses this information to make recommendations to the Secretary of the Interior for appointment of members to the Regional Councils. The information collected is restricted to the Regional Council member selection process and only to staff that the Federal Subsistence Board deems necessary. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

We invite comments concerning this proposed information collection on: (1) Whether or not the collection of information is necessary for the proper selection of Regional Council members, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Dated: November 4, 2005.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–23173 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before December 23, 2005.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Permit No. TE–110964

Applicant: John MacFarlane, Fort Worth, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit No. TE–112023

Applicant: Escarpment Environmental, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*), and black-capped vireo (*Vireo atricapillus*) within Texas. Additionally, applicant requests authorization to survey for and collect the following species within Texas: *Batrisodes texanus* (Coffin Cave mold beetle), *Batrisodes venyivi* (Helotes mold beetle), *Cicurina baronia* (Robber Baron Cave meshweaver), *Cicurina madla* (Madla's cave meshweaver), *Cicurina venii* (Braken Bat Cave meshweaver), *Cicurina vespera* (Government Canyon Bat Cave meshweaver), *Neoleptoneta microps* (Government Canyon Bat Cave spider), *Neoleptoneta myopica* (Tooth Cave spider), *Rhadine exilis* (ground beetle, no common name), *Rhadine infernalis* (ground beetle, no common name), *Rhadine persephone* (Tooth Cave ground beetle), *Tartarocreagris texana* (Tooth Cave pseudoscorpion), *Texamaurops reddelli* (Kretschmarr Cave mold beetle), *Texella cokendolpheri* (Cokendolpher cave harvestman), *Texella reddelli* (Bee Creek Cave harvestman), and *Texella reyesi* (Bone Cave harvestman).

Permit No. TE–113511

Applicant: Jill Clausen, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona and California: San Joaquin kit fox (*Vulpes macrotis mutica*), lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*).

Permit No. TE–815409

Applicant: New Mexico Department of Game and Fish, Santa Fe, New Mexico.

Applicant requests an amendment to an existing permit to conduct presence/absence surveys and management projects for the following species: Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), Noel's amphipod (*Gammarus desperatus*) in New Mexico, and Pecos assiminea (*Assiminea pecos*) in New Mexico and Texas. In addition, presence/absence surveys and management projects will also be conducted for Gila chub (*Gila intermedia*) within New Mexico.

Permit No. TE–676811

Applicant: U.S. Fish & Wildlife Service, Region 2, Albuquerque, New Mexico.

Applicant requests an amendment to the Regional Director's permit to add Gila chub (*Gila intermedia*) within Arizona. The listed species will be effective November 21, 2005.

Permit No. TE–039467

Applicant: USGS–BRD Arizona Cooperative Fish & Wildlife Unit, Tucson, Arizona.

Applicant requests a renewal to an existing permit to conduct presence/absence surveys and management projects for Gila chub (*Gila intermedia*) within Arizona.

Permit No. TE–821577

Applicant: Arizona Game and Fish Department, Phoenix, Arizona.

Applicant requests an amendment to an existing permit to conduct presence/absence surveys and management projects for Gila chub (*Gila intermedia*) within Arizona.

Permit No. TE–114260

Applicant: Cynthia Carey, Boulder, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct laboratory management projects for Leon Springs pupfish (*Cyprinodon bovinus*), Comanche Springs pupfish (*Cyprinodon ekegans*), and Desert pupfish (*Cyprinodon macularis*) within Colorado.

Permit No. TE–114262

Applicant: Stelle & Associates, Inc., Tulsa, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: November 4, 2005.

Bryan Arroyo,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–23160 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Post-Delisting Monitoring Plan for the Douglas County Distinct Population Segment of the Columbian White-tailed Deer (*Odocoileus virginianus leucurus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Post-delisting Monitoring Plan for the Douglas County Distinct Population Segment of the Columbian White-tailed Deer (*Odocoileus virginianus leucurus*) (Monitoring Plan). The status of the Douglas County distinct population segment of the Columbian white-tailed deer will be monitored over a 5-year period through spring and fall population trend monitoring surveys, regular disease outbreak monitoring, and an annual habitat status review. We solicit review and comment on this Monitoring Plan from local, State and Federal agencies, and the public.

DATES: We will accept and consider all public comments received on or before December 23, 2005.

ADDRESSES: Copies of the Monitoring Plan are available by request from the State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266 (telephone: 503–231–6179; fax: 503–231–6195). This Monitoring Plan is also available on the World Wide Web at *http://www.fws.gov/oregonfwo/EndSpp/ESA-Actions/PDMonitorCWTDeer-05.htm.*

FOR FURTHER INFORMATION CONTACT: Cat Brown, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION:

Background

The Douglas County distinct population segment of the Columbian white-tailed deer was removed from the Federal List of Threatened and Endangered Wildlife and Plants on July 24, 2003 (68 FR 43647). We determined it was recovered due to robust population growth and amelioration of threats to its survival. Section 4(g)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that we implement a system, in cooperation with the States, to monitor for no fewer than 5 years the status of all species that have recovered and no longer need the protection of the Act.

The Columbian white-tailed deer is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978; Baker 1984). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936; Verts and Carraway 1998). It currently exists in two distinct population segments, one in Douglas County, Oregon, and the other along the lower Columbia River in Oregon and Washington. The Columbia River distinct population segment remains listed as endangered.

We propose to monitor the status of the Columbian white-tailed deer over a 5-year period in cooperation with the Oregon Department of Fish and Wildlife and the Bureau of Land Management, through spring and fall population trend monitoring surveys, regular disease outbreak monitoring, and an annual habitat status review. We will compile annual reports, in cooperation with the Oregon Department of Fish and Wildlife and the Bureau of Land Management. If data from this monitoring effort, or some other source, indicate that the Columbian white-tailed deer is experiencing significant declines in abundance or distribution, or that it requires protective status under the Act for some other reason, we can initiate listing procedures including, if appropriate, emergency listing.

In April 2004, we contacted three experts on the white-tailed deer, asking for scientific review of the draft Monitoring Plan. We received two responses to our request. We carefully considered the comments of the reviewers and used them to improve the Monitoring Plan.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit your comments and materials concerning this Monitoring Plan by any of these methods:

1. You may submit written comments and information by mail, facsimile, or in person to the Oregon Fish and Wildlife Office at the above address (see **ADDRESSES**).

2. You may send comments by electronic mail (e-mail) to: *cwtdeerplan@fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Comments and materials received, as well as supporting documentation used in preparation of the Monitoring Plan, will be available for inspection, during normal business hours at the above Portland address (see **ADDRESSES**).

References Cited

Bailey, V. 1936. The mammals and life zones of Oregon. U.S. Government Printing Office, Washington, DC. 416 pp.

Baker, R.H. 1984. Origin, classification and distribution. Pages 1–18 *in:* Halls, L. K., editor. White-tailed Deer: Ecology and Management. Stackpole Books, Harrisburg, Pennsylvania.

Halls, L. K. 1978. White-tailed Deer. Pages 43–65 *in:* Schmidt, J. L. and D. L. Gilbert, editors. Big Game of North America: Ecology and Management. Stackpole books, Harrisburg, Pennsylvania.

Verts, B. J. and L. N. Carraway. 1998. Land mammals of Oregon. University of California Press, Berkeley, California. 668 pp.

Author

The primary author of this document is Cat Brown, Oregon Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 24, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–23157 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Assessment and Receipt of an Application for a Permit To Enhance the Survival of the Fluvial Arctic Grayling in the Upper Big Hole River in Southwestern Montana Through an Umbrella Candidate Conservation Agreement With Assurances

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Montana Fish, Wildlife and Parks (FWP) has applied to the Fish and Wildlife Service (Service) for an Enhancement of Survival Permit for the fluvial Arctic grayling (*Thymallus arcticus*) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed Umbrella Candidate Conservation Agreement with Assurances (Agreement) between the FWP and the Service. The USDA Natural Resources Conservation Service (NRCS) and Montana Department of Natural Resources and Conservation (DNRC) also are signatories for the proposed Agreement. The Agreement, the permit application, and the Environmental Assessment are made available for public comment by this notice.

The purpose of the Agreement is for private landowners and the FWP, NRCS, DNRC, and the Service to implement conservation measures for the fluvial Arctic grayling in the upper Big Hole River in southwestern Montana. The effort is in support of the FWP's ongoing efforts to enhance the abundance and distribution of the fluvial Arctic grayling throughout its historic range in the upper Missouri River basin. The conservation measures would be implemented by FWP, NRCS, DNRC, the Service, and by participating landowners. A technical working group comprised of FWP, NRCS, DNRC, and the Service developed the conservation measures for the proposed Agreement. Consistent with the Service's Candidate Conservation Agreement with Assurances Final Policy (CCAA Policy) (64 FR 32726, June 17, 1999), the Agreement is intended to facilitate the conservation of fluvial Arctic grayling by giving the State of Montana and cooperating private landowners incentives to implement conservation measures. Participating Landowners would receive regulatory certainty concerning land and water use restrictions that might otherwise apply should the fluvial Arctic grayling become listed under the ESA. Participating Landowners with eligible property in the upper Big Hole River watershed in southwestern Montana could sign up under the Agreement and the associated permit through site-specific plans for their property and a Certificate of Inclusion. The proposed term of the Agreement and the permit is 20 years.

The Service and FWP have prepared a joint Environmental Assessment for execution of the Agreement and issuance of the permit pursuant to the National Environmental Policy Act (for the Service) and implementation of the Agreement pursuant to the Montana Environmental Policy Act (for FWP). The environmental assessment considers the biological, environmental, and socioeconomic effects of the proposed Agreement and permit. The assessment also evaluates two alternatives to the Agreement and permit, and their potential impacts on the environment.

We request comments from the public on the permit application, draft Agreement, and draft Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments on the permit application must be received on or before January 23, 2006.

ADDRESSES: Written data or comments concerning the permit application, the draft Agreement, or the draft Environmental Assessment are to be submitted to Arctic Grayling CCAA, U.S. Fish and Wildlife Service, 100 North Park Avenue, Suite 320, Helena, Montana 59601. Written comments also may be provided electronically to *fw6_arcticgrayling@fws.gov*, or by facsimile to 406–449–5339. Comments must be submitted in writing to be considered in the Service's decision-making process.

FOR FURTHER INFORMATION CONTACT: Mark Wilson or Douglas Peterson at the above address, or telephone 406–449–5225.

SUPPLEMENTARY INFORMATION:

Document Availability

Persons wishing to review the permit application, Agreement, and the Environmental Assessment may obtain a copy by writing the Service's Montana Ecological Services office at the above address, or contacting the above office by telephone, electronic mail, or facsimile. You also may make an appointment to view the documents at the above address during normal business hours. The documents also are available electronically on the World Wide Web at *http://mountain-prairie.fws.gov/species/fish/grayling/grayling.htm*.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their properties to benefit species that are proposed for listing under the ESA, candidate species, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to unlisted species by assuring them they will not be subjected to increased property-use restrictions if the species is listed in the future under the ESA. Application requirements and issuance criteria for enhancement of survival permits through CCAAs are found in 50 CFR 17.22(d) and 17.32(d).

On July 25, 1994, the Service found that listing the fluvial Arctic grayling of the upper Missouri River Distinct Population Segment (DPS) was warranted but precluded by higher priority listing actions, and it has remained on the Service's candidate species list since that time. Fluvial Arctic grayling currently occupy only about 5 percent of their historic range in the Missouri River basin above the Great Falls, and the remaining population is found in an approximately 129-kilometer (80-mile) segment of the upper Big Hole River in southwestern Montana. The fluvial Arctic grayling population in the Big Hole River has declined in abundance and distribution in recent years, and ongoing efforts by FWP to re-establish additional fluvial Arctic grayling in other rivers within its historic range have not yet produced any self-sustaining populations. This DPS remains at risk, and FWP and the Service carefully monitor the status of the species.

The Montana Fluvial Arctic Grayling Workgroup's 1995 Montana Fluvial Arctic Grayling Restoration Plan and the Service's 2004 Candidate Notice of Review have identified threats that contribute to the current and future status of the species. These include—habitat loss, fragmentation, and degradation caused by hydrologic alterations and stream dewatering from irrigation withdrawals, thermal loading, loss of riparian habitat, and cross-channel irrigation diversion structures; drought; entrainment in irrigation ditches; and encroachment by nonnative

trout species. Most of the current and historic fluvial Arctic grayling habitat in the Big Hole River watershed is on or adjacent to private lands. The decline of fluvial Arctic grayling in the system has been attributed in part to agricultural activities on these lands, so the active involvement of private landowners in conservation efforts is viewed as critical to the preservation of the species.

Consequently, FWP has developed an Agreement for the fluvial Arctic grayling in cooperation with the NRCS, DNRC, and the Service; and has applied to the Service for a permit under section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*), which would authorize future take of the fluvial Arctic grayling by FWP and cooperating landowners if and when the species is listed. The FWP and the Service believe approval of the Agreement is necessary to promote implementation of conservation measures on non-Federal lands.

The FWP and the Service believe implementation of the Agreement will increase the distribution and abundance of fluvial Arctic grayling in the Big Hole River, and will make a significant contribution to the long-term viability of the species. Without the Agreement, FWP and the Service are concerned that the population of fluvial Arctic grayling in the Big Hole River may continue to decline. Further decline of the species will increase the risk of its extirpation. The FWP and the Service believe that implementing proactive conservation measures in cooperation with private landowners prior to any potential ESA listing will realize greater conservation benefits for the species than post-listing actions.

Under the Agreement and permit, Participating Landowners would provide certain fluvial Arctic grayling habitat protection and/or enhancement measures on their lands. Protection and enhancement measures will be directed at improving habitat conditions for all age classes of fluvial Arctic grayling primarily by increasing instream flows, conserving or restoring riparian habitats, removing or mitigating for any man-made barriers to migration, and reducing threats from entrainment in irrigation ditches. If the fluvial Arctic grayling upper Missouri River DPS is listed under the ESA, and a Participating Landowner is properly implementing the agreed-to conservation measures, the permit would authorize take of fluvial Arctic grayling that may result from the non-Federal landowner's agricultural or ranching related activities (e.g., surface-water diversion and irrigation, hay cultivation and harvesting, livestock grazing, farm equipment operation) so long as they were being conducted according to the Agreement and the landowner's site-specific plan.

We are providing this notice pursuant to section 10(c) of the ESA and implementing regulations for the National Environmental Policy Act (40 CFR § 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA, the Service's CCAA Policy and the National Environmental Policy Act. The Service also will evaluate whether the issuance of the permit and execution of the Agreement by the Service complies with section 7 of the ESA by conducting an intra-Service section 7 consultation on the issuance of the permit and execution of the permit. If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the FWP for take of fluvial Arctic grayling incidental to otherwise lawful activities in accordance with the terms of the Agreement and the permit. We will not make our final decision until after the end of the 60-day comment period and after consideration of all comments received during the comment period.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Dated: October 18, 2005.

Sharon R. Rose,

Acting Regional Director, Denver, Colorado.

[FR Doc. 05–23151 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Logan Cave National Wildlife Refuge in Benton County, AR

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act of 1969 and its implementing regulations.

The National wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following.

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process. Open house style meeting(s) will be held throughout the scoping phase of the comprehensive conservation plan development process.

ADDRESSES: Comments, questions, and requests for more information regarding the Logan Cave National Wildlife Refuge planning process should be sent to: Ben Mense, Refuge Manager, Logan Cave National Wildlife Refuge, 10448 Holla Bend Road, Dardanelle, Arkansas 72834; Telephone 479/229–4300; Fax: 479/229–4302; Electronic mail: *ben_mense@fws.gov.* To ensure consideration, written comments must be received no later than January 9, 2006. 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 home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Logan Cave National Wildlife Refuge was established in 1989 under the Endangered Species Act of 1973. This 123-acre Ozark Mountain refuge, which

includes a limestone-solution cave, is 20 miles west of Fayetteville, Arkansas, and approximately 2 miles north of U.S. Highway #412. The ecology of Logan Cave Refuge has been described as the highest-quality cave habitat in the entire Ozark region. A spring-fed stream, with an average water flow of 5 million gallons/day, extends the entire length of the cave. The primary objectives of the refuge are to properly administer, preserve, and develop the tract for protection of a unique cave ecosystem that provides essential habitat for endangered species, such as the gray bat and the Ozark cave crayfish, the threatened Ozark cavefish, and other significant cave-dwelling wildlife species.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 2, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–23152 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held December 14, 2005, beginning at 9 a.m. and adjourning at 4 p.m. at the Foothills Environmental Learning Center, 3188 Sunset Peak Rd., Boise, ID. Public comment periods will be held after topics on the agenda.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Meeting topics will include the following:

- Hot Topics—Acting District Manager;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District;
- District Administrative Officer, John Hatch provides a review of the 2006 budget process, budget reductions and impacts to workload accomplishments.
- Subcommittee Reports:
- Rangeland Standards and Guidelines;
- Briefing on the status of assessments, appeals and litigation,
- OHV & Transportation Management;
- Update on DOI's preferred options for implementation of Federal Lands Recreation Enhancement Act's RAC's,
- Update on OHV Route Designation in Owyhee County
- Sage Grouse Habitat Management, and;
- Briefing on 2005 and proposed activities of the Owyhee Sage Grouse Local Working Group,
- Resource Management Plans
- Overview of proposed Preferred Alternative for draft RMP–EIS for the Snake River Birds of Prey National Conservation Area.

Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: November 17, 2005.

Mitchell A. Jaurena,

Acting Associate District Manager.

[FR Doc. 05–23159 Filed 11–22–05; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1098 (Preliminary)]

Liquid Sulfur Dioxide From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: November 17, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted the subject investigation in response to a petition filed on September 30, 2005, by Calabrian Corporation, Kingwood, Texas (70 FR 58747, October 7, 2005). Subsequently, the U.S. Department of Commerce (''Commerce'') extended the date for its initiation of the investigation (70 FR 61937, October 27, 2005). Commerce's Initiation of Antidumping Duty Investigation: Liquid Sulfur Dioxide from Canada was published in the **Federal Register** on November 17, 2005 (70 FR 69735), thereby providing notice to the Commission of its initiation of the subject investigation. Accordingly, the Commission will transmit its determination in the preliminary phase of this investigation to Commerce within 25 days of November 17, 2005. The Commission's views are due at Commerce within five business days thereafter.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201) and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23180 Filed 11–22–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–042]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 1, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

TELEPHONE: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–287 (Review) (Raw In-Shell Pistachios from Iran)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 15, 2005.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 21, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–23301 Filed 11–21–05; 3:10 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period

On October 6, 2005, a proposed consent decree in *United States* v. *General Electric Company,* Civil Action No. 50–cv–1270, was lodged with the United States District Court for the Northern District of New York. The proposed consent decree will settle the United States' claims under the Comprehensive Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.,* relating to the release of polychlorinated biphenyls into the Hudson River. Notice of the lodging of the proposed Consent Decree appeared in 70 FR 59771 (October 13, 2005).

Notice is hereby given that the Department of Justice has extended for thirty (30) days the length of the period during which it will receive comments relating to the proposed consent decree. Therefore, the Department of Justice will now receive comments through December 14, 2005. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company,* Civil Action No. 05–cv–1270, D.J. Ref. 90–11–2–529. Directions for examining and/or obtaining a copy of the proposed consent decree may be found in the original **Federal Register** notice cited above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–23208 Filed 11–22–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 15, 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: Revision of a currently approved collection.

Title: Trade Act Participant Report (TAPR).

OMB Number: 1205–0392.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 50.

Annual Responses: 200.

Average Response time: 2.5 hours.

TAA burden	Hours per TAPR submission	States submitting per quarter	Annual TAPR burden hours	Applicable hourly rate	Annual TAPR burden dollars
TAPR Submission	2.5	50	500	$32.50	$16,250
Data Collection	0.3	30,000	9,000	32.50	292,500

Total Annual Burden Hours: 9,500.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): $308,750.

Description: On June 16, 1998, OMB approved a Government Performance Results Act compliant data collection

and reporting system for the Trade Adjustment Assistance program. This system was revised in 2000 and is now known as the Trade Act Participant Report (TAPR). States implemented the TAPR beginning with the first quarter of fiscal year 1999, and have continued to collect and report data every quarter since then.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–23146 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,881]

Champion Laboratories, Inc. Albion, IL Including an Employee of Champion Laboratories, Inc., Albion, IL Located in Bristol, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 15, 2005, applicable to workers of Champion Laboratories, Inc., Albion, Illinois. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62347).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Albion, Illinois facility of Champion Laboratories, Inc. located in Bristol, Connecticut. Mr. Armedee Nadeau provided sales support services for the production of filters at the Albion, Illinois location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Albion, Illinois facility of Champion Laboratories, Inc. located in Bristol, Connecticut.

The intent of the Department's certification is to include all workers of Champion Laboratories, Inc., Albion, Illinois who was adversely affected by increased company imports.

The amended notice applicable to TA-W–57,881 is hereby issued as follows:

All workers of Champion Laboratories, Inc., Albion, Illinois (TA–W–57,881), including an employee of Champion Laboratories, Albion, Illinois, located in Bristol, Connecticut (TA–W–57,881A), who became totally or partially separated from employment on or after August 27, 2004, through September 15, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of November, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6461 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,805]

Edward Fields, Inc. Currently Known As Jack & Joel, Inc., College Point, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 23, 2005, applicable to workers of Edward Fields, Inc., College Point, New York. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62347).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of custom made carpets and rugs.

The subject firm originally named Edward Fields, Inc., was renamed Jack & Joel, Inc. in April 2005 due to a change in ownership. The State agency reports that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Jack & Joel, Inc., College Point, New York.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Edward Fields, Inc. who were adversely affected by increased company imports.

The amended notice applicable to TA–W–57,805 is hereby issued as follows:

All workers of Edward Fields, Inc., currently known as Jack & Joel, Inc., College Point, New York, who became totally or partially separated from employment on or after July 28, 2004, through September 23, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of October 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6460 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of October and November 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) All of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) Both of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially

separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either:

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) Contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,005; Fairfield Textile Corp., Paterson, NJ

TA–W–58,005A; Fairfield Textile Corp., Paterson, New Jersey, Paterson, NJ

TA–W–58,015; Techneglas, Inc., Columbus, OH

TA–W–58,015A; Techneglas, Inc., Pittston, PA

TA–W–58,139; Kellogg Brown and Root, Inc. (KBR), Workers at International Paper Facility, Mansfield, LA

TA–W–57,887; Parlex Corp., Multi-Layer Business Unit Div., Methuen, MA

TA–W–58,040; Cope Tool and Die, Inc., Traverse City, MI

TA–W–58,043; Intermark Fabric Corp., Plainfield, CT

TA–W–58,159; FDB, Inc., Lincolnton, GA

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

None

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) have not been met.

TA–W–57,893; Century Technology, Inc., So. San Francisco, CA

TA–W–58,092; Port Augustus Glass/L.E. Smith Glass, Mt. Pleasant, PA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–57,968; IBM Corporation, Business Transformation Outsourcing Div., Maumee, OH

TA–W–57,991; MED–Data Inc., Salem, OR

TA–W–58,017; GE Consumer Finance, America's Money Services (Formerly GE Finan. Assur.), Schaumburg, IL

TA–W–58,029; IBM, Business Transformation Outsourcing Div., Maumee, OH

TA–W–58,062; Integreo, Inc., Formerly STI Knowledge, Macon, GA

TA–W–58,063; Sony Electronics, Inc., Customer Service Div., San Diego, CA

TA–W–58,136; Hewlett Packard Co., Storage Area Works Division, Boise, ID

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

None

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–57,849 Levi Strauss and Co., Headquarters, San Francisco, CA: August 22, 2005

TA–W–57,849A Levi Strauss and Co., Center of Excellence Div., Weston, FL: August 22, 2005

TA–W–57,992 Radicispandex, Gastonia, NC: September 19, 2004

TA–W–58,000 Drexel Heritage Furniture Industries, Inc., Plant #75, Morganton, NC: September 14, 2004

TA–W–58,003 Alyeska Pipeline Service Company, Anchorage, AK: September 20, 2004

TA–W–58,003A Alyeska Pipeline Service Company, Fairbanks, AK: September 20, 2004

TA–W–58,003B Alyeska Pipeline Service Company, Valdez, AK: September 20, 2004

TA–W–58,010 Holland American Wafer Co., Grand Rapids, MI: September 22, 2004

TA–W–58,011 Cherry Electrical Product, Div. of Cherry Corporation, Pleasant Prairie, WI: September 22, 2004

TA–W–58,032 Ken-Tron Mfg., Inc., Owensboro, KY: September 12, 2004

TA–W–58,033 Semiconductor Industries, LLC, (East Greenwich, RI location), East Greenwich, RI: October 31, 2005

TA–W–58,059 Pomeroy Computer Resources, Working On-Site at R.J. Reynolds Tobacco Co., Macon, GA: October 3, 2004

TA–W–58,084 Draeger Medical, Inc., Telford, PA: October 6, 2004

TA–W–58,091 Beiersporf, Inc., Futuro Manufacturing Div., Mariemont, OH: October 3, 2004

TA–W–58,096 Parker Hannifin Corporation, Powertrain Div., On Site Leased Workers of Time Staffing, Goshen, IN: October 7, 2004

TA–W–58,106 Seiko Optical Products of America, Inc., Pentax Vision

Division, Stock Coating Department, Hopkins, MN: October 7, 2004

TA–W–58,108 Southern California Foam, Inc., aka Lazy Pet Products, A Subsidiary of United Pet Group, Hazleton, PA: October 10, 2004

TA–W–58,138; Halmode Apparel, New York, NY: October 6, 2004

TA–W–58,170; International Specialty Products, San Diego, CA: October 11, 2004

TA–W–57,887A; Parlex Corp., Corporate Sales and Administration Subdivision, Methuen, MA: September 2, 2004

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–57,887A; Parlex Corp., Corporate Sales and Administration Subdivision, Methuen, MA: September 2, 2004

TA–W–58,041; FoamPro Manufacturing, Inc., Irvine, CA: September 28, 2004

TA–W–58,060; Madison Brands, Inc., New York, NY: September 16, 2004

TA–W–58,077; Friedrich Air Conditions, San Antonio, TX: October 31, 2005

TA–W–58,083; Ach Foam Technologies, LLC, Epsilon Foam Corporation Div., Azusa, CA: October 5, 2004

TA–W–58,099; Wip-X Systems, Inc., Mansfield, GA: October 6, 2004

TA–W–58,124; Victory Plastics International LLC, Haverhill, MA: October 12, 2004

TA–W–58,176; Dixon Ticonderoga Company, Versailles, MO: October 19, 2004

TA–W–58,189; Meridian Automotive Systems, Inc., Canandaigua, NY: October 21, 2004

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

None

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,096; Parker Hannifin Corporation, Powertrain Div., On Site Leased Workers of Time Staffing, Goshen, IN

The Department has determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–57,893; Century Technology, Inc., So. San Francisco, CA

TA–W–57,968; IBM Corporation, Business Transformation Outsourcing Div., Maumee, OH

TA–W–58,092; Port Augustus Glass/L.E. Smith Glass, Mt. Pleasant, PA

TA–W–57,887; Parlex Corp., Multi-Layer Business Unit Div., Methuen, MA

TA–W–58,040; Cope Tool and Die, Inc., Traverse City, MI

TA–W–58,043; Intermark Fabric Corp., Plainfield, CT

TA–W–58,159; FDB, Inc., Lincolnton, GA

TA–W–58,005; Fairfield Textile Corp., Paterson, NJ

TA–W–58,005A; Fairfield Textile Corp., Paterson, NJ

TA–W–58,015; Techneglas, Inc., Columbus, OH

TA–W–58,015A; Techneglas, Inc., Pittston, PA

TA–W–58,139; Kellogg Brown and Root, Inc. (KBR), Workers at International Paper Facility, Mansfield, LA

TA–W–57,991; MED-Data Inc., Salem, OR

TA–W–58,017; GE Consumer Finance, America's Money Services (Formerly GE Finan. Assur.), Schaumburg, IL

TA–W–58,029; IBM, Business Transformation Outsourcing Div., Maumee, OH

TA–W–58,062; Integreo, Inc., Formerly STI Knowledge, Macon, GA

TA–W–58,063; Sony Electronics, Inc., Customer Service Div., San Diego, CA

TA–W–58,136; Hewlett Packard Co., Storage Area Works Division, Boise, ID

TA–W–58,025; Kealey Johnson Wholesale Florist, Abingdon, VA

TA–W–58,136; Hewlett Packard Co., Storage Area Works Division, Boise, ID

TA–W–58,025; Kealey Johnson Wholesale Florist, Abingdon, VA

TA–W–58,116; Commscope, Inc., Scottsboro, AL

TA–W–58,185; General Electric Co., Mebane, NC

TA–W–58,196; Thomas C. Wilson, Inc., Long Island City, NY

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–57,849; Levi Strauss and Co., Headquarters, San Francisco, CA: August 22, 2005

TA–W–57,849A; Levi Strauss and Co., Center of Excellence Div., Weston, FL: August 22, 2005

TA–W–58,033; Semiconductor Industries, LLC, (East Greenwich, RI location), East Greenwich, RI: October 31, 2005

TA–W–58,084; Draeger Medical, Inc., Telford, PA: October 6, 2004

TA–W–58,091; Beiersporf, Inc., Futuro Manufacturing Div., Mariemont, OH: October 3, 2004

TA–W–58,106; Seiko Optical Products of America, Inc., Pentax Vision Division, Stock Coating Department, Hopkins, MN: October 7, 2004

TA–W–58,108; Southern California Foam, Inc., aka Lazy Pet Products, A Subsidiary. of United Pet Group, Hazleton, PA: October 10, 2004

TA–W–58,138; Halmode Apparel, New York, NY: October 6, 2004

TA–W–58,170; International Specialty Products, San Diego, CA: October 11, 2004

TA–W–57,992; Radicispandex, Gastonia, NC: September 19, 2004
TA–W–58,000; Drexel Heritage Furniture Industries, Inc., Plant #75, Morganton, NC: September 14, 2004
TA–W–58,010; Holland American Wafer Co., Grand Rapids, MI: September 22, 2004
TA–W–58,011; Cherry Electrical Product, Div. of Cherry Corporation, Pleasant Prairie, WI: September 22, 2004
TA–W–58,032; Ken-Tron Mfg., Inc., Owensboro, KY: September 12, 2004
TA–W–58,059; Pomeroy Computer Resources, Working On-Site at R.J. Reynolds Tobacco Co., Macon, GA: October 3, 2004
TA–W–58,003; Alyeska Pipeline Service Company, Anchorage, AK: September 20, 2004
TA–W–58,003A; Alyeska Pipeline Service Company, Fairbanks, AK: September 20, 2004
TA–W–58,003B; Alyeska Pipeline Service Company, Valdez, AK: September 20, 2004
TA–W–58,083; Ach Foam Technologies, LLC, Epsilon Foam Corporation Div., Azusa, CA: October 5, 2004
TA–W–58,124; Victory Plastics International LLC, Haverhill, MA: October 12, 2004
TA–W–58,176; Dixon Ticonderoga Company, Versailles, MO: October 19, 2004
TA–W–58,189; Meridian Automotive Systems, Inc., Canandaigua, NY: October 21, 2004
TA–W–58,060; Madison Brands, Inc., New York, NY: September 16, 2004
TA–W–58,099; Wip-X Systems, Inc., Mansfield, GA: October 6, 2004

I hereby certify that the aforementioned determinations were issued during the month of October and November 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 15, 2005.

Erica R. Canton,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–6463 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 5, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 5, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of November, 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 10/31/05 AND 11/4/05

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58232	Farris Fashions, Inc. (State)	Brinkley, AR	10/31/05	10/28/05
58233	Motor Appliance, Inc. (State)	Blytheville, AR	10/31/05	10/28/05
58234	Hearthstone Enterprises (Comp)	Boone, NC	10/31/05	10/28/05
58235	MBTM Ltd, Inc. (Comp)	Munith, MI	10/31/05	10/26/05
58236	Natick Paperboard Corp. (USWA)	Natick, MA	10/31/05	10/28/05
58237	Erie Steel Products Company (Comp)	Erie, PA	10/31/05	10/28/05
58238	Eaton Corporation (USW)	Saginaw, MI	11/01/05	10/24/05
58239	Savcor Coatings, Ltd. (Wkrs)	Ft. Worth, TX	11/01/05	10/27/05
58240	GST AutoLeather (State)	Hagerstown, MD	11/01/05	10/31/05
58241	Maitlen and Benson, Inc. (State)	Long Beach, CA	11/01/05	10/31/05
58242	Visteon Corporation (UAW)	Lansdale, PA	11/01/05	10/26/05
58243	SavaJe Technologies (Wrks)	Chelmsford, MA	11/01/05	10/28/05
58244	Hexcel Corporation (Comp)	Washington, GA	11/01/05	10/18/05
58245	Agilent Technologies (Comp)	Roseville, CA	11/01/05	10/27/05
58246	Wellington Cordage (State)	Madison, GA	11/01/05	10/20/05
58247	Guilford Mills, Inc. (Wkrs)	Kenansville, NC	11/02/05	10/29/05
58248	Cerro Fabricated Products, Inc. (Wkrs)	Weyers Cave, VA	11/02/05	10/11/05
58249	FMC Idaho, LLC (Wkrs)	Pocatello, ID	11/02/05	11/01/05
58250	Independence Airlines (AMFA)	Dulles, VA	11/02/05	11/01/05
58251	Foamex LP (State)	Fort Smith, AR	11/02/05	11/01/05
58252	Flair Design Limited (Wkrs)	Alexandria, IN	11/02/05	10/25/05
58253	G and H Custom Cabinets (Comp)	Seagrove, NC	11/02/05	11/02/05
58254	WestPoint Home (Comp)	Biddeford, ME	11/02/05	10/28/05
58255	DRS–SSW (Comp)	Morgan Hill, CA	11/02/05	11/01/05
58256	Tee Time Sportsware (State)	Hazleton, PA	11/02/05	10/24/05
58257	Motorola, Inc. (Wkrs)	Tempe, AZ	11/02/05	10/31/05

TAA PETITIONS INSTITUTED BETWEEN 10/31/05 AND 11/4/05—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58258	ATA Airlines, Inc. (Wkrs)	Chicago, IL	11/02/05	10/05/05
58259	U.S. Union Tool, Inc. (State)	Buena Park, CA	11/04/05	11/02/05
58260	Gemtron Corp. (Comp)	Holland, MI	11/04/05	11/02/05
58261	Alliance Consulting (Wkrs)	Philadelphia, PA	11/04/05	10/29/05
58262	Shuford Mills (Wkrs)	Hudson, NC	11/04/05	11/02/05
58263	Parkdale Mills, Inc. (Comp)	Belmont, NC	11/04/05	10/25/05
58264	Regency Sportswear, Inc. (Comp)	Selmer, TN	11/04/05	11/02/05
58265	VF Jeanswear Limited Partnership (Comp)	Greensboro, NC	11/04/05	11/01/05
58266	U.S. Pipe and Foundry Co. (Comp)	Chattanooga, TN	11/04/05	11/02/05
58267	G and G Hosiery (State)	Fort Payne, AL	11/04/05	10/31/05
58268	Simpson Door Company (WCIW)	McCleary, WA	11/04/05	11/03/05
58269	Easthampton Dye Works, Inc. (Comp)	Easthampton, MA	11/04/05	11/03/05
58270	UTI Integrated Logistics (Comp)	Greenville, SC	11/04/05	11/01/05
58271	Cargill, Incorporated (Comp)	Decatur, AL	11/04/05	11/02/05
58272	Sun Shade Holding (Wkrs)	El Cerrito, CA	11/04/05	10/22/05
58273	Elmer's Products, Inc. (Comp)	Bainbridge, NY	11/04/05	10/13/05
58274	Saint-Gobain Container (GMP)	Carteret, NJ	11/04/05	10/27/05
58275	Barth and Dreyfuss (State)	Ontario, CA	11/04/05	10/26/05
58276	Allegheny Energy, Inc. (Wkrs)	Greensburg, PA	11/04/05	10/25/05
58277	Quint-T Corp. (USW)	Erie, PA	11/04/05	10/24/05
58278	Bangor Electronics Co. (Comp)	Bangor, MI	11/04/05	11/01/05
58279	Jones Apparel Group (Comp)	Bristol, PA	11/04/05	11/03/05
58280	TRW (USW)	Jackson, MI	11/04/05	10/31/05
58281	H.B. Williamson Co. (Comp)	Fairfield, IL	11/04/05	10/24/05

[FR Doc. E5–6466 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,001]

Lea Industries, La-Z-Boy Greensboro, Inc., Morristown, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 28, 2005, applicable to workers of Lea Industries, La-Z-Boy Greensboro, Inc., Morristown, Tennessee. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers receive, inspect, ship, and warehouse bedroom and dining room furniture.

The firm formerly produced bedroom furniture at this facility and all workers of Lea Industries in Morristown, Tennessee, were certified eligible to apply for worker adjustment assistance under petition number TA–W–52,200, that expired July 22, 2005.

In order to avoid an overlap in worker group coverage, the Department is amending the current certification for workers of Lea Industries, La-Z-Boy Greensboro, Inc., Morristown, Tennessee, to change the impact date from September 16, 2004 to July 23, 2005.

The amended notice applicable to TA–W–58,001 is hereby issued as follows:

All workers of Lea Industries, a division of La-Z-Boy Greensboro Inc., Morristown, Tennessee, who became totally or partially separated from employment on or after July 23, 2005, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 8th day of November, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6462 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,831]

Mueller Copper Tube Products, Inc., Subsidiary of Mueller Industries, Inc., Wynne, AR; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand in *Former Employees of Mueller Copper Tube Products, Inc.* v. *Elaine Chao, U.S. Secretary of Labor*, Court No. 05–00442.

The Department's initial negative determination for the former workers of Mueller Copper Tube Products, Inc., a subsidiary of Mueller Industries, Inc., Wynne, Arkansas (hereafter ''Mueller Copper Tube Products'') for Trade Adjustment Assistance (''TAA'') was issued on May 17, 2005. The Notice of determination was published in the **Federal Register** on June 13, 2005 (70 FR 34154).

The petition for the workers of Mueller Copper Tube Products engaged in the production of copper tube products was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The ''contributed importantly'' test is generally demonstrated through a

survey of the workers' firm's customers. The survey revealed that customers of the subject firm did not increase reliance on imports of copper tube products in 2003, 2004 and during the period of January through March of 2005 over the corresponding 2003 period. The subject firm did not import copper tube products nor did it shift production to a foreign country during the relevant period.

By letter of July 14, 2005 to the USCIT, the Petitioners appealed the denial alleging that the subject firm lost its business due to other businesses selling copper tubing manufactured in Mexico.

A careful review of the documents revealed that the Department surveyed major declining customers of the subject firm regarding their purchases of ''copper tubing''. In order to establish import impact, the Department must consider imports that are ''like or directly competitive'' with those produced at the subject firm. Because the customer survey which specifies copper tubing as a product might have omitted information on other ''like or directly competitive'' products, the Department requested, and was granted, a voluntary remand to conduct a further investigation. The Order was issued on September 13, 2005.

Hence, during the remand investigation, the Department conducted another survey of the subject firm's major declining customers regarding their purchases of products ''like or directly competitive'' to copper tubing manufactured by the subject firm during the relevant time period. The remand investigation revealed that the major declining customers did not increase their reliance on imports of products ''like or directly competitive'' to copper tubing during the relevant time period.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Mueller Copper Tube Products, Inc., a subsidiary of Mueller Industries, Inc., Wynne, Arkansas.

Signed at Washington, DC, this 9th day of November, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6465 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,225]

New Riverside Ochre Company; Cartersville, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 28, 2005 in response to a petition filed by a company official on behalf of workers of New Riverside Ochre Company, Cartersville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of November, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6464 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will meet December 8–9, 2005, in Washington, DC. This meeting is open to the public.

Time and Date: ACCSH will meet from 8:30 a.m. to 4:30 p.m., Thursday, December 8, 2005, and from 8:30 a.m. to Noon, Friday, December 9, 2005.

Place: ACCSH will meet in Room N–3437 A/B/C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: For general information about ACCSH and ACCSH meetings: Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)–693–2020. For information about submission of comments, requests to speak, and for special accommodations for the meeting: Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: ACCSH will meet December 8–9, 2005, in Washington, DC. The agenda for this meeting includes:

- Remarks—Office of the Assistant Secretary—OSHA.
- Remarks—OSHA's Directorate of Construction.
- Trenching Data and Initiative Update.
- Trench/Excavation Rescue Presentation.
- Standards Update.
- Work Group Assignments and Reports.
- OSHA Hurricane Response and FEMA Annex Activation Overview.
- OSHA's Role in National Response Plan.
- OSHA Partnership, Alliance, Challenge, and Voluntary Protection Program for Construction Update.
- Public Comment (During this period, any member of the public is welcome to address ACCSH about construction-related safety and health issues. See information below to request time to speak.).

All ACCSH meetings, as well as those of its work groups, are open to the public. For access to the official record of the ACCSH meeting, go to OSHA's Web page at *http://www.osha.gov*. The record is also available for inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 899–5627). Electronic copies of this **Federal Register** notice, as well as information about ACCSH work groups and other relevant documents, are available at OSHA's Web page.

Interested parties may request to make an oral presentation to ACCSH by notifying Ms. Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (e.g., the name of the business or organization), if any, and a brief outline of the presentation. Alternately, at the meeting, attendees may request to address ACCSH by signing the public comment request sheet. Requests to present or speak may be granted at the ACCSH Chair's discretion and as time permits.

Attendees and interested parties may also submit written data, views, or comments, preferably with 20 copies, to Ms. Chatmon, at the address above or at the ACCSH meeting. OSHA will provide submissions to ACCSH members and will include each submission in the record of the meeting.

Individuals needing special accommodations for the ACCSH meeting should contact Ms. Chatmon by December 2, 2005.

ACCSH Work Groups

Tuesday, December 6, 2005—Work Groups

The following ACCSH work groups will meet December 6, 2005, in Room S–4215 of the Frances Perkins Building at the address above:

8:30 a.m.–12:30 p.m.—Diversity/Multilingual work group.

1:30–4:30 p.m.—Roll-Over Protective Structures work group.

Wednesday, December 7, 2005—Work Groups

The following ACCSH work groups will meet December 7, 2005, in Room S–2217 of the Frances Perkins Building at the address above:

8:30–10:30 a.m.—Trenching work group.

10:30 a.m.–4:30 p.m.—Residential Fall Protection work group.

ACCSH work group meetings are open to the public. For further information on ACCSH work group meetings or participating in them, please contact Michael Buchet at the address above or look on the ACCSH page on OSHA's Web page.

Authority: Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, this 17th day of November, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–23147 Filed 11–22–05; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 9, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–10, 6 items, 6 temporary items). Inputs, master files, outputs, system documentation, and electronic mail and word processing copies associated with an electronic system used to collect and report consumer input on food safety concerns regarding meat, poultry, and egg products.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–22, 8 items, 8 temporary items). Inputs, master files, outputs, system documentation, and electronic mail and

word processing copies associated with an electronic system that schedules and tracks laboratory test results for contaminants found in meat, poultry, and egg products at domestic meat and poultry plants. Test results were previously approved as permanent as part of other laboratory and enforcement electronic systems.

3. Department of Health and Human Services, Food and Drug Administration (N1–88–05–2, 36 items, 29 temporary items). Records of the Center for Drug Evaluation and Research relating to research, compliance, manufacturing, efficacy testing, approval, and inspection activities associated with regulating drug products. Included are such records as case management tracking data, monthly lists of approved drugs, company proprietary manufacturing data file, drug reviewer working files, product name analysis database, post-marketing commitments quarterly reports, and post-approval commitments for abbreviated new drug applications. This schedule updates the descriptions for some of these recordkeeping files previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of product efficacy reviews and annual approved drug lists which were previously approved for disposal. Also proposed for permanent retention are recordkeeping copies of historical database records relating to approved drug products, post-marketing commitment tracking system and documentation, and documentation relating to components of a database management system previously scheduled as permanent. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of State, Permanent Mission of the U.S.A. to the Organization of American States (N1–84–05–1, 15 items, 11 temporary items). Principal Officers' files relating to routine matters and schedules of daily activities, extra copies of outgoing correspondence, public speaking and other news media files, and Mission program plans. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are Principal Officers' files pertaining to policy development and the setting of precedents, briefing books, Inter-American Commission on Human Rights petition and case files, and Mission subject and country files.

5. Department of Transportation, Bureau of Transportation Statistics (N1–570–05–2, 5 items, 4 temporary items). Unpublished internal directives and guidance, and copies of published internal directives maintained for reference. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of internal directives. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–11, 14 items, 14 temporary items). Records accumulated by the Associate Administrator for Administration, including administrative files, budget background records, chronological files, and reference files. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of the Treasury, Office of the Deputy Assistant Secretary for Human Resources (N1–56–06–1, 3 items, 3 temporary items). Records relating to awards of special achievement or accomplishment during or at the conclusion of an individual's agency career. Included are such records as nomination forms, concurrences, professional biographies, and copies of award certificates. Also included are electronic copies of records created using electronic mail and word processing.

8. Department of the Treasury, U.S. Mint (N1–104–05–2, 3 items, 2 temporary item). Electronic copies of records created using electronic mail and word processing that pertain to the daily activities of senior officials, including schedules, calendars, appointment books, and logs. Proposed for permanent retention are recordkeeping copies of these files.

9. Department of Veterans Affairs, Veterans Health Administration (N1–15–05–3, 11 items, 11 temporary items). Inputs, outputs, master files, backups, documentation, and electronic mail and word processing copies associated with an electronic system used to store and track data about Administration employees' and other workers' occupational injuries and illnesses.

10. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–05–9, 5 items, 5 temporary items). Toxic Substances Control Act Section 12(b) Notice of Export Files, with related tracking system. Also included are electronic copies of records created using electronic mail and word processing.

11. Federal Reserve System, Board of Governors (N1–82–05–1, 13 items, 4 temporary items). Inputs, outputs, and restricted master files associated with an electronic system used to collect and report data on residential loan applications. Proposed for permanent retention are recordkeeping copies of non-restricted ultimate, final, panel, and combined census master files, aggregate reports, and system documentation. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: November 17, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–23144 Filed 11–22–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

Seabrook Station, Unit No. 1; FPL Energy Seabrook, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of FPL Energy Seabrook, LLC (FPLE or the licensee) to withdraw its March 28, 2005, application for an amendment to Facility Operating License No. NPF–86 for the Seabrook Station, Unit No. 1 (Seabrook), located in Rockingham County, New Hampshire.

The proposed amendment would have revised the Seabrook Technical Specification (TS) 3/4.9.13, ''Spent Fuel Assembly Storage,'' to reflect a revised criticality safety analysis. This analysis was intended to support a two-zone spent fuel pool (SFP) consisting of BORAFLEX® and BORAL® fuel assembly storage racks. Additionally, the proposed change would have created TS 3/4.9.15, ''Spent Fuel Pool Boron Concentration,'' to support the planned SFP changes.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 10, 2005 (70 FR 24653). However, by letter dated October 24, 2005, FPLE withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 28, 2005, and the licensee's letter dated October 24, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* 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 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of November, 2005.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6454 Filed 11–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to the Nuclear Management Company, LLC (NMC or the licensee) for operation of the Monticello Nuclear Generating Plant (Monticello) located in Wright County, Minnesota.

The proposed amendment, requested by NMC in its application dated June 29, 2005, represents a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR/4,'' Revision 3, dated April 2001. NUREG–1433 has been developed by the Commission's staff through working groups composed of NRC staff and industry representatives, and has been endorsed by the NRC staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22,1993 (58 FR 39132), to the CTS and using NUREG–1433 as a basis, proposed ITS for Monticello. The criteria in the Final Policy Statement was subsequently added to Title 10 of the Code of Federal Regulations (10 CFR), part 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This notice is based on the application dated June 29, 2005, and any information provided to the NRC through the Monticello ITS Conversion Web page. To expedite its application review, the NRC staff will issue requests for additional information (RAIs) through the Monticello ITS Conversion web page and the licensee will address the RAIs by providing responses on the Web page. Entry into the database is protected so that only designated licensee and NRC reviewers can enter information; however, the public can access the database to read the questions asked and the responses provided. To be in compliance with the regulations for written communications for license amendment requests and to have the database on the Monticello docket before the amendment would be issued, the licensee will provide a copy of the database in a submittal to the NRC after there are no further RAIs and before the amendment is to be issued.

The public can access the database through the NRC Internet home page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.* Click on the link located near the bottom of the page titled ''Improved Technical Specifications Data Base'' to access the Excel Services Corporation ITS Licensing Databases. Click on ''Monticello Nuclear Power Plant Licensing Database'' to view comments and responses. The RAIs and responses are organized by ITS sections 1.0, 2.0, 3.0, 3.1 through 3.9, 4.0, and 5.0, and include beyond scope issues (BSIs) which are discussed later in this notice. For every ITS section or BSI, RAIs can be read by clicking on the applicable ITS Section. Licensee responses are indicated by a solid blue triangle below the ITS Number or, if accessing from the ITS Section, at the bottom of the page. To read a response, click on the triangle. To page down through the ITS sections, click on ''Next'' along the top or bottom of the page. Click on ''Previous'' to return to the previous page.

The licensee has categorized the proposed changes to the CTS into five general groupings within the description of changes (DOC) section of the application. These groupings are characterized as administrative changes (i.e., ITS x.x, DOC A.xx); more restrictive changes (i.e., ITS x.x, DOC M.xx); relocated specifications (i.e., ITS x.x, DOC R.xx); removed detail changes (i.e., ITS x.x, DOC LA.xx); and less restrictive changes (i.e., ITS x.x, DOC L.xx). The DOCs are numbered sequentially within each letter designator for each ITS Chapter, Section, or Specification, and the designations are A.xx for administrative changes, M.xx for more restrictive changes, R.xx for relocated specifications, LA.xx for removed detail changes, and L.xx for less restrictive changes.

Administrative changes involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements, and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1433 and does not involve technical changes to the CTS. The proposed changes include: (a) Poviding the appropriate numbers, etc., for NUREG–1433 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1433 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes invoke more stringent requirements compared to the CTS for facility operation. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the standard technical specification (STS) that is more restrictive than the CTS which the licensee proposes to adopt in the ITS, the licensee has provided an explanation as to why it concluded that

adopting the more restrictive requirement is desirable to ensure safe operation of the facility because of specific plant design features.

Relocated changes involve relocating requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TSs. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the 10 CFR 50.36(c) and, therefore, may be relocated to appropriate licensee-controlled documents. The licensee's application of the screening criteria is described in Enclosure 1 to the June 29, 2005, application. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively-controlled documents such as the quality assurance program, the updated final safety analysis report (UFSAR), the ITS Bases, the Technical Requirements Manual that is incorporated by reference in the UFSAR, the core operating limits report, the offsite dose calculation manual, the inservice testing program, the inservice inspection program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59.

Removed detail changes to the CTSs eliminate detail and relocate the detail to a licensee-controlled document. Typically, this involves details of system design and function, or procedural detail on methods of conducting a surveillance requirement (SR). These changes are supported, in aggregate, by a single generic no significant hazard consideration. The generic type of removed detail change is identified in italics at the beginning of the DOC.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The ''more significant'' less restrictive requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. Relaxations previously granted to individual plants on a plant-specific basis were, in most cases, the result of (a) generic NRC actions, (b) new NRC staff positions that evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved STSs. Generic relaxations contained in NUREG–1433 were reviewed by the NRC staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design is being reviewed to determine if the specific design-basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1433, thus providing a basis for the ITS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

There are also changes proposed that are different from the requirements in both the CTSs and the STSs of NUREG–1433. These are designated as BSIs and are discussed below. The first 15 BSIs were identified by the licensee and described in Enclosure 2 of their application. In some cases, a BSI may be addressed as a justification for deviation (JFD) from the STS, and identified as ITS x.x, JFD x. The BSIs to the conversion, listed in the order of the applicable ITS specification or section, are as follows:

1. CTS 3.1.A refers to the ''Setpoints'' of the Reactor Protection System (RPS) Instrumentation Functions in CTS Table 3.1.1 and CTS Table 3.1.1, and specifies the ''Limiting Trip Settings'' for the RPS Instrumentation Functions. The Limiting Trip Settings of CTS Table 3.1.1 Trip Functions 3.a, 4.a, and 4.c have been modified to reflect new ''Allowable Values'' as indicated for ITS Table 3.3.1.1–1 Functions 1.a and 2.a. This changes the CTS by requiring RPS Instrumentation to be set consistent with the new Allowable Values. (ITS 3.3.1.1, DOC L.12)

2. CTS Table 4.1.1 requires a weekly functional test of the Manual Scram Function. ITS Table 3.3.1.1–1 Function 11 and ITS SR 3.3.1.1.5 require the performance of the same test at a 31-day frequency. This changes the CTS by extending the Manual Scram functional test frequency from 7 days to 31 days. (ITS 3.3.1.1, DOC L.14)

3. CTS Table 3.2.5 specifies the ''Trip Setting'' for the Anticipated Transient Without Scram-Recirculation Pump Trip High Reactor Dome Pressure Function. The Trip Setting of CTS Table 3.2.5 Function 1 has been modified to reflect the new less restrictive Allowable Value as indicated in ITS SR 3.3.4.1.5.b (ITS 3.3.4.1, DOC L.4)

4. CTS Table 3.2.2 specifies the ''Trip Setting'' for Emergency Core Cooling System (ECCS) Instrumentation Functions. The Trip Setting of CTS 3.2.2 Function C.3 has been modified to reflect new more restrictive Allowable Values as indicated for ITS Table 3.3.5.1–1 Functions 4.c, 4.d, 5.c and 5.d. (ITS 3.3.5.1, DOC M.8)

5. CTS Table 3.2.2 and Table 3.2.8 specify the ''Trip Setting'' for ECCS Instrumentation Functions. The Trip Settings of CTS Table 3.2.2 Functions A.1.b.i and A.2, and Table 3.2.8 Function C.1 have been modified to reflect new less restrictive Allowable Values as indicated for ITS Table 3.3.5.1–1 Functions 1.c, 1.d, 2.c, 2.d, and 3.d. In addition, the Allowable Value for ITS Table 3.3.5.1–1 Function 3.d only specifies a single Allowable value, which is applicable for both one- and two-tank operation. (ITS 3.3.5.1, DOC L.5)

6. CTS Table 3.2.8 specifies the ''Trip Setting'' for the Condensate Storage Tank Level—Low for two tank and one tank operation. The Trip Settings of CTS Table 3.2.8 Function C.1 have been modified to reflect a new less restrictive Allowable Value as indicated for ITS Table 3.3.5.2–1 Function 3. In addition, the Allowable Value for this Function only specifies a single Allowable Value, which is applicable for both one- and two-tank operation. (ITS 3.3.5.2, DOC L.3)

7. CTS Table 3.2.1 specifies the ''Trip Settings'' for the Primary Containment Isolation Instrumentation. The Trip Settings of CTS Table 3.2.1 Functions 3.d, 4.a, 4.b, 4.c, and 5.b have been modified to reflect more restrictive Allowable Values as indicated in ITS Table 3.3.6.1–1 Function 3.a, 3.b, 3.c, 4.c, and 5.a. (ITS 3.3.6.1, DOC M.9)

8. CTS Table 3.2.1 specifies the ''Trip Settings'' for the Primary Containment Isolation Instrumentation. The Trip Settings of CTS Table 3.2.1 Functions 1.b, 1.d, 5.a, 5.c, and 6.a have been modified to reflect new less restrictive Allowable Values as indicated in ITS Table 3.3.6.1–1 Functions 1.b, 1.c, 4.a, 4.b, and 6.a. (ITS 3.3.6.1, DOC L.9)

9. CTS Table 3.2.6 specifies the ''Trip Settings'' for the Loss of Power Instrumentation. The Trip Setting of CTS Table 3.2.6 Function 1 has been modified to reflect new more restrictive Allowable Values as indicated for ITS Table 3.3.8.1–1 Functions 2.a and 2.b. (ITS 3.3.8.1, DOC M.3)

10. CTS 3.2.C.2.b states that the Rod Block Monitor (RBM) bypass time delay must be less than or equal to 2.0 seconds. ITS 3.3.2.1 does not require the RBM bypass time delay to be OPERABLE. This changes the CTS by deleting the RBM bypass time delay requirements. (ITS 3.3.2.1, DOC L.5)

11. CTS 4.14 does not provide a delayed entry into associated Conditions and Required Actions if a Post-Accident Monitoring (PAM) channel is inoperable solely for performance of required surveillances. ITS SR Note 2 has been added to allow delayed entry into associated Conditions and Required Actions for up to 6 hours if a PAM channel is placed in an inoperable status solely for performance of required surveillances, provided the associated function remains capable. This changes the CTS by providing a delay time to enter Conditions and Required Actions for a PAM channel placed in an inoperable status solely for performance of required surveillances. (ITS 3.3.3.1, DOC L.2)

12. CTS 4.1.C.2 requires an instrument calibration of each RPS power monitoring channel every ''Operating Cycle.'' ITS SR 3.3.8.2.2 requires the performance of a CHANNEL CALIBRATION of the overvoltage, undervoltage, and underfrequency setpoints every 184 days. This changes the CTS by increasing the frequency of performing a CHANNEL CALIBRATION of the overvoltage, undervoltage, and underfrequency setpoints. (ITS 3.3.8.2, DOC M.3)

13. CTS 4.5.F.1 provides a cross-reference to the SRs in CTS 4.6.G. However, these are jet pump surveillances and reflect stability monitoring issues. ITS SR 3.4.1.2 requires verification of operation in the Normal Region of the power-to-flow map every 24 hours or in the Stability Buffer Region of the power-to-flow map, with power distribution controls as specified in the Core Operating Limits Report, every 24 hours. This changes the CTS by deleting the cross references to the SRs in CTS 4.6.G and adds a new SR. (ITS 3.4.1, DOC M.1)

14. CTS 6.8.B includes the Primary Coolant Sources Outside Containment program requirements. The Combustible Gas Control System (CGCS) is included in this program. ITS 5.5.2 includes the same program requirements for the Primary Coolant Sources Outside Containment program, except the CGCS will not be included. This changes the CTS by deleting the program requirement for the CGCS in the Primary Coolant Sources Outside Containment program. (ITS 5.5, DOC L.4)

15. CTS 6.8.B.2 specifies that the integrated leak test requirements for each system outside containment that could contain highly radioactive fluids during a serious transient or accident must be performed at a refueling cycle or less. CTS 6.8.B also states that CTS 4.0.B (i.e. a 25 percent allowable grace period) is applicable. ITS 5.5.2.b specifies that the same test must be performed at least once per 24 months and that the provisions of ITS SR 3.0.2 (25 percent allowable grace period) are applicable. This changes the CTS by extending the frequency of the surveillance from 18 months to 24 months, with a maximum of 30 months accounting for the allowable grace period. (ITS 5.5, DOC L.5)

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on

a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent Jonathan Rogoff, Esq., 700 First Street, Hudson, WI 54016, attorney for the licensee.

For further details with respect to this action, see the licensee's application for amendment dated June 29, 2005, and the Monticello ITS Conversion Web page (as discussed above). Documents may be examined, and/or copied for a fee at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. 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 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of November, 2005.

For the Nuclear Regulatory Commission.

John F. Stang,

Sr. Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–6451 Filed 11–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–01–082 and EA–04–172]

In the Matter of: Williams Industrial Services Group, LLC, 2076 West Park Place, Stone Mountain, GA 30087; Confirmatory Order (Effective Immediately)

Williams Industrial Services Group, LLC, (Williams) and its subsidiaries (collectively known as Williams Group) perform services for multiple reactor facilities regulated by the U.S. Nuclear Regulatory Commission (NRC or Commission). Williams assumed the contractual obligations of Williams Service Group, LLC, formerly known as Williams Power Corporation (WPC), relating to services performed for NRC licensees. Williams' headquarters are located in Stone Mountain, Georgia.

On May 22, 2000, the NRC's Office of Investigations (OI) began an investigation into alleged employment discrimination, during March 2000, by WPC at FirstEnergy Nuclear Operating Company's (FENOC) Perry and Davis-Besse Nuclear Power Plants. A predecisional enforcement conference (PEC) was held with FENOC and WPC at the NRC Region III office on September 26, 2001. Subsequent to the PEC, a supplemental investigation was conducted by OI Report No. 3–2000–025S and an apparent violation concerning the completeness and accuracy of information was identified during that investigation.

On February 24, 2005, the NRC staff issued Notices of Violation (Notices) to FENOC and to WPC. The NRC also issued an order on February 25, 2005, to the supervisor prohibiting involvement in NRC-licensed activities for three years for deliberately providing materially inaccurate information to the NRC in violation of 10 CFR 50.5(a)(2). The Notice to WPC described violations of 10 CFR 50.7, ''Employee protection,'' for discrimination and of 10 CFR 50.5(a)(2), ''Deliberate misconduct,'' for deliberate inaccurate statements to the NRC. The NRC also informed WPC that FENOC had been offered an opportunity to pursue resolution of the 10 CFR 50.7 violation with alternative dispute resolution (ADR). In ADR, a neutral mediator with no decision-making authority facilitates discussions between concerned parties to assist them in reaching an agreement on resolving concerns. If FENOC had elected to enter into ADR, the NRC would have offered WPC an opportunity to participate. FENOC did not elect to enter into ADR, and on March 28, 2005, FENOC admitted to the 10 CFR 50.7 violation.

In a letter dated March 25, 2005, Williams Service Group, LLC (WSG) disputed the violations cited against WPC. On April 15, 2005, WSG requested an opportunity to enter into ADR with the NRC in order to resolve the violations cited in the Notice. The NRC granted the request, and on July 26, 2005, the NRC and WSG met at NRC Headquarters in Rockville, Maryland, at which time a settlement was reached.

Based upon the corrective actions taken as documented in the WSG letter dated March 25, 2005, and the commitments noted in Section IV below, the NRC hereby withdraws the 10 CFR 50.5(a)(2) violation cited against WPC on February 24, 2005. In addition, the 10 CFR 50.7 violation, originally issued as severity level III, is hereby re-characterized as a violation without severity level specified.

By letter dated March 25, 2005, and as further discussed during the July 26, 2005, ADR meeting, Williams stated that it already had taken steps to enhance awareness of and compliance with its safety conscious work environment (SCWE) program at NRC-license facilities. These completed actions include: (1) Enacting a new SCWE policy approved by the Williams Board of Directors in August 2002, (2) ensuring that new employees receive site-specific information on Williams' SCWE policy as well as ways to raise safety concerns to Williams supervision, licensees and the NRC, and (3) conducting more-detailed SCWE training sessions to employees facilitated by Williams' senior management. Furthermore, by letter dated September 2, 2005, Williams stated that, in addition to the actions already taken to enhance awareness of and compliance with its SCWE program, Williams agrees to take certain additional corrective measures as noted in Section IV of this Confirmatory Order.

On October 25, 2005, Williams consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. Williams further agreed in its October 28, 2005, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through NRC's

confirmation of the commitments as outlined in this Order.

I find that Williams' commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Williams' commitments be confirmed by this Order. Based on the above and the Williams' consent, this Order is immediately effective upon issuance. Williams is required to provide the NRC with a letter summarizing its actions by no later than eight months from the date of the Confirmatory Order.

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered, effective immediately, that:*

By no later than six months from the date of issuance of the Confirmatory Order, unless otherwise stated, Williams Industrial Services Group, LLC, will:

1. Broadly communicate throughout Williams Group the false statement issue and its consequences, including the consequences to the involved WPC Site Supervisor.

2. Modify its existing ''Ethics Policy'' to include an explicit reference to the necessity for complete and candid communications with government agencies.

3. Incorporate the revised Ethics Policy into all future SCWE training by Williams Group.

4. Require its General Counsel to conduct a comprehensive review of industry SCWE ''best practices'' and compare these practices with the existing Williams Group program in order to ensure that the Williams Group program incorporates industry trends and developments.

5. Continue its existing SCWE training program and train all Williams Group supervisory and management level employees involved in nuclear work. The training program will incorporate both 10 CFR 50.5 and 10 CFR 50.7 awareness. Additionally, Williams will ensure that on-site employees are provided SCWE training either from the licensee or from the Williams Group site project manager upon badging at a licensed facility.

6. Engage an independent auditor to perform an audit of Williams Group's SCWE training, within 12 months of issuance of the Confirmatory Order and every year thereafter for a total of three years, in order to ensure the effectiveness of the SCWE program. At the conclusion of the three years independent audit cycle, Williams Group will institute internal audits, as described in item #7 below.

7. Require that Williams internal auditing function conduct annual audits of the SCWE training program in order to ensure and verify that all Williams Group managers, supervisors and contractor employees receive and acknowledge SCWE, 10 CFR 50.5, and 10 CFR 50.7 training.

8. Ensure that the results of each audit are provided to senior Williams Group management for appropriate action, and that the results of both the independent audit and subsequent Williams' analysis and/or actions are made available to the Commission for review upon request. Towards this end, Williams will notify the Commission when the audits and management responses are complete and documented.

9. Designate a manager whose responsibilities include overall administration of the SCWE program. This manager will be responsible for ensuring that the program is being communicated to all Williams Group site and contract employees, the program is up-to-date and incorporates best practices, the audits described above take place as scheduled, results of audits are communicated to senior management, and appropriate followup is performed and corrective actions are taken based upon the audit findings. This manager will report directly to the Williams president for these SCWE activities.

10. Require its General Counsel to review employment practices as they relate to SCWE policy, in order to ensure that all Williams Group employment practices are consistent with 10 CFR 50.7.

11. Modify its performance appraisal system to ensure that performance appraisals for Williams Group site supervisors/project managers at NRC-licensed facilities include a rating factor that addresses implementation of the SCWE program.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Williams Industrial Services Group, LLC, of good cause.

Any person adversely affected by this Confirmatory Order, other than Williams Industrial Services Group, LLC, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4351, and to Williams Group. Because of potential disruptions in delivery of mail to United States Government Offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 15th day of November, 2005.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. E5–6450 Filed 11–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Minnesota: NRC Draft Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Minnesota

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a Proposed Agreement with the State of Minnesota.

SUMMARY: By letter dated July 6, 2004, Governor Tim Pawlenty of Minnesota requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would discontinue, and Minnesota would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a Draft Staff Assessment of the Minnesota Program. Comments are requested on the proposed Agreement and the NRC Draft Staff Assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Minnesota from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires December 9, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov*.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to pdr@nrc.gov.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Minnesota including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML041960496, ML041960499, ML052440344, ML050130375, ML050140452, ML051330043, ML051740384, ML051650073, ML052200424, and ML053060372.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–3340 or e-mail *CHM1@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 17,200 agreement material licenses, while NRC regulates approximately 4,700 licenses. Under the proposed Agreement, approximately 167 NRC licenses will transfer to Minnesota. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated July 6, 2004, Governor Pawlenty certified that the State of Minnesota has a program for the control of radiation hazards that is adequate to protect public health and safety within Minnesota for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Minnesota requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which NRC's authority is discontinued and transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Minnesota and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the amendment, suspension or termination of the Agreement; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Minnesota.

(c) Minnesota currently registers users of naturally-occurring and accelerator-produced radioactive materials. Authority for Minnesota's radiation control unit and proposed Agreement State activities is primarily found in

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

Minnesota Statutes, sections 144.12–144.121, and in the Minnesota Rules Chapter 4731. Section 144.1202 provides the authority for the Governor to enter into an Agreement with the Commission and contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Minnesota licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC Draft Staff Assessment finds that the Minnesota Program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Draft Staff Assessment of the Minnesota Program for the Control of Agreement Materials

NRC staff has examined the Minnesota request for an Agreement with respect to the ability of the Minnesota radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria''), published on January 23, 1981 (46 FR 7540), as amended by policy statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Environmental Health Division (Program) of the Minnesota Department of Health (MDH). The Program will be responsible for implementation of all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Minnesota State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. The Program supervisor has more than 20 years work experience in radiation protection.

The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Minnesota has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 3.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC.

(b) *Legislation and Regulations.* The MDH is designated by law in section 144.1202 of the Minnesota Statutes to be the radiation control agency. The law provides the MDH the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The MDH is authorized to promulgate regulations.

The State's regulations are found in Minnesota Rules Chapter 4731 effective June 2004. The NRC staff reviewed and forwarded comments on these regulations to the Minnesota staff. The NRC staff review verified that, with the comments incorporated, the Minnesota rules, and with the addition of legally binding requirements to incorporate recent changes to 10 CFR part 35 and 71 contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The MDH has extended the effect of the rules, where appropriate, to apply to naturally-occurring or accelerator-produced radioactive materials (NARM), in addition to agreement materials. The NRC staff is satisfied that the Minnesota Program, will not regulate in areas reserved to the NRC in matters concerning or affecting the proposed Agreement.

(c) *Storage and Disposal.* Minnesota has also adopted NRC compatible requirements for the handling and storage of radioactive material. Minnesota will not seek authority to regulate the land disposal of radioactive material as waste. The Minnesota waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Minnesota licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Minnesota has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) *Recordkeeping and Incident Reporting.* Minnesota has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Minnesota has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Minnesota has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Minnesota radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Minnesota Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The MDH is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Minnesota law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Minnesota law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Minnesota. The law provides that these former NRC licenses will expire on the date of expiration specified in the NRC license.

Minnesota also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. Minnesota Rules Chapter 4731 provides exemptions from the

State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Minnesota to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Minnesota Program will continue to be compatible with the NRC's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Minnesota to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its Draft Staff Assessment, the NRC staff concludes that the State of Minnesota meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated at Rockville, Maryland, this 7th day of November, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Appendix A—An Agreement Between the United States Nuclear Regulatory Commission and the State of Minnesota for the Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Minnesota is authorized under § 144.1202, Subdivision 1, Minnesota Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Minnesota certified on July 6, 2004, that the State of Minnesota (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State acting in behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear materials, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

F. The regulation of the land disposal of by-product, source, or special nuclear materials waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E, F, and G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear materials shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear materials.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State] this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.
Nils J. Diaz,
Chairman.

For the State of Minnesota.
Tim Pawlenty,
Governor.

[FR Doc. 05–22581 Filed 11–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–34406]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Parker Hughes Institute, Roseville, MN

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Decommissioning Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352. Telephone: 630–829–9870; fax number: 630–515–1259; e-mail: *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment of Material License No. 22–26786–01 issued to Parker Hughes Institute (the licensee), to authorize release of its Bays 12 and 13 at 2657 Patton Road facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this amendment 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. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to amend the licensee's byproduct material license and release its Bays 12 and 13 at 2657 Patton Road facility for unrestricted use. On April 18, 1997, the Atomic Energy Commission authorized the licensee to conduct the radiological operations. The primary radioactive materials used at 2657 Patton Road facility were hydrogen-3, carbon-14, phosphorus-32, phosphorus-33, sulfur-35, and iodine-125. On September 27, 2005, the licensee submitted a license amendment request to amend its license to release its Bays 12 and 13 at 2657 Patton Road facility for unrestricted use. The licensee has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.''

The staff has examined the licensee's request and the information provided in support of its request, including the surveys performed to demonstrate compliance with the release criteria. The staff has found that the radiological environmental impacts from the proposed action are bounded by the impacts evaluated in the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action and a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

On the basis of the EA, the NRC concluded that there are no significant environmental impacts from the proposed amendment and determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML052800438 for the September 27, 2005, amendment request, ML053110124 for the October 28, 2005, additional information to the amendment request, and ML053180555 for the EA summarized above. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville

Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 14th day of November 2005.

For the Nuclear Regulatory Commission.

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region III.

[FR Doc. E5–6459 Filed 11–22–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 28, 2005:

An Open Meeting will be held on Tuesday, November 29, 2005 at 10 a.m. in Room L–002, the Auditorium, and a Closed Meeting will be held on Wednesday, November 30, 2005 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c),(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a), (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Open Meeting scheduled for Tuesday, November, 29, 2005 will be:

The Commission will consider whether to propose amendments to the proxy rules under Section 14 of the Securities Exchange Act of 1934. The proposed amendments would provide an alternative model by which companies conducting proxy solicitations could satisfy the Rule 14a–3 requirement to furnish proxy materials by posting those proxy materials on an Internet Web site and providing shareholders with notice of the Internet availability of the materials. Other soliciting persons also would be permitted to follow the proposed alternative model.

The subject matter of the Closed Meeting scheduled for Wednesday, November 30, 2005 will be:

Formal orders of investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Opinions; and a
Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 18, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23250 Filed 11–18–05; 4:07 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52781; File No. SR–Amex–2005–069]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Relating to Listing Standards for Broad-Based Index Options and Concentration Limits for Narrow-Based Index Option Listing Standards

November 16, 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 June 24, 2005, the American Stock Exchange LLC (''Amex'' 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 Amex. On August 17, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On September 13, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] On September 28, 2005, the Amex filed Amendment No. 3 to the proposed rule change.[5] On September 30, 2005, the Amex filed Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Commentary .02 to Amex Rule 901C and amend Amex Rule 904C to adopt generic listing standards and position and exercise limits for broad-based index options. The Exchange also proposes to revise the concentration limitation for narrow-based index option generic listing standards in Commentary .03 to Amex Rule 901C. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex'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 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 III below. The Amex 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

Listing and Maintenance Standards and Position and Exercise Limits for Broad-Based Index Options

The Amex proposes to adopt new Commentary .02(a) to Amex Rule 901C to establish initial listing standards for broad-based index options. The proposal will allow the Amex to list, pursuant to Rule 19b–4(e) under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] In Amendment No. 2, the Amex made minor revisions to the proposed rule text and clarified that the request for expedited review and accelerated effectiveness set forth in Amendment No. 1 includes the revision to concentration limits for narrow-based index options.

[5] In Amendment No. 3, the Amex set forth its interpretation of the term ''major market data vendor'' in proposed Commentary .02(a)(11) to Rule 901C to include the Options Price Reporting Authority (OPRA) and the Consolidated Tape Association (CTA), as well as other securities information processors. The Exchange also set forth how the term ''vendor'' is defined in Rule 600(b)(83) of Regulation NMS under the Act.

[6] In Amendment No. 4, the Amex made minor revisions to the proposed rule text.

Act,[7] broad-based index options that meet the ''generic'' listing standards in new Commentary .02(a) to Amex Rule 901C. The listing standards require, among other things, that the underlying index be a broad stock index group, as defined in Amex Rule 900C(b)(1); that options on the index be a.m.-settled; that the index be capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted; and that the index be comprised of at least 50 securities, all of which must be ''NMS stocks,'' as defined in Rule 600 of Regulation NMS.[8] In addition, new Commentary .02(a) to Amex Rule 901C requires that the index's component securities meet certain minimum market capitalization and average daily trading volume requirements; that no single component account for more than 10% of the weight of the index and that the five highest weighted components represent no more than 33% of the weight of the index; that the index value be widely disseminated at least every 15 seconds; and that the Amex have written surveillance procedures in place with respect to the index options.

The Amex also proposes to adopt new Commentary .02(b) to Amex Rule 901C, which establishes maintenance standards for broad-based index options listed pursuant to new Commentary .02(a) to Amex Rule 901C. In addition, the Amex proposes to amend Amex Rule 904C to establish position limit and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to new Commentary .02(a) to Amex Rule 901C.[9]

Narrow-Based Index Options ''Generic'' Listing Standards

Commentary .02(a)(7) (redesignated as Commentary .03(a)(7)) to Amex Rule 901C provides that no single component security may represent more than 25% of the weight of the index, and that the five highest weighted component securities in the index may not, in the aggregate, account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange proposes to amend Commentary .02(a)(7) to increase the 25% concentration limit for the highest weighted component stock to 30%, and to increase the concentration limit for the five most highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%. In addition, the continuing listing standard found in Commentary .02(d)(1) (redesignated as Commentary .03(d)(1)) to Amex Rule 901C will be similarly revised to reflect the proposed increase in percentage weights of a single issuer to 30% and the five most highly weighted stocks in an index consisting of fewer than 25 component securities to 65%. The Exchange believes that the proposed revision to Commentary .02 to Amex Rule 901C should provide additional flexibility in the listing and trading of narrow-based index options while continuing to serve the intended purpose of preventing a single security or small number of securities from dominating an index.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act [11] in general and furthers the objectives of section 6(b)(5) [12] in particular in that it is 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange did not receive any written comments on the proposed rule change.

III. 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–Amex–2005–069 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–2005–069. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–2005–069 and should be submitted on or before December 14, 2005.

[7] 17 CFR 240.19b–4(e).

[8] *See* Amendment No. 4, *supra* note 6. Rule 600 of Regulation NMS defines an ''NMS stock'' to mean ''any NMS security other than an option.'' An ''NMS security'' is ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' *See* 17 CFR 242.600.

[9] *See* Amendment No. 4, *supra* note 6. Amex Rule 905C establishes exercise limits for index options at the same levels as the corresponding index option's position limits. The Exchange also proposes to make minor technical changes to the rule text of Amex Rule 904C. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on August 30, 2005.

[10] *See* Securities Exchange Act Release No. 51267 (February 25, 2005), 70 FR 10715 (March 4, 2005) (approving an identical proposal by the International Securities Exchange, Inc. (''ISE'') to increase the concentration limits for narrow-based index option generic listing standards).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[14] which requires, among other things, 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 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.

To list options on a particular broad-based index, the Amex currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

As described more fully above, the Amex proposes to establish listing standards for broad-based index options. The Commission's approval of the Amex's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b–4(e), without constituting a proposed rule change within the meaning of section 19(b) of the Act and Rule 19b–4, for which notice and comment and Commission approval is necessary.[15] The Amex's ability to rely on Rule 19b–4(e) to list broad-based index options that meet the requirements of Commentary .02(a) to Amex Rule 901C potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

The Commission notes that the Amex has represented that it has adequate trading rules, procedures, listing standards, and surveillance program for broad-based index options. Amex's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C. Other existing Amex rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, the Amex proposes to establish position and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C.[16] The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The Amex represents that it has adequate surveillance procedures for broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C. In addition, because Commentary .02(a) to Amex Rule 901C requires that each component of an index be an ''NMS stock,'' as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through Nasdaq. Accordingly, the Amex will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group (''ISG'').[17] Commentary .02(a) to Amex Rule 901C also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the Amex and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.[18] The Commission believes that these requirements will help to ensure that the Amex has the ability to monitor trading in broad-based index options listed pursuant to Commentary .02(a) to Amex Rule 901C and in the component securities of the underlying indexes.

The Commission believes that the requirements in Commentary .02(a) to Amex Rule 901C regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, Commentary .02(a) to Amex Rule 901C requires that the underlying index be a ''broad stock index group,'' as defined in Amex Rule 900C(b)(1).[19] The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in Commentary .02(a) to Amex Rule 901C that the current index value be widely disseminated at least once every 15 seconds by the one or more major market data vendors[20] during the time an index option trades on the Amex should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in Commentary .02(a) to Amex Rule 901C that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.[21]

The Commission believes that increasing the concentration limits for narrow-based index options listed pursuant to Commentary .03 to Amex

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[16] *See* Amendment No. 4, *supra* note 6.

[17] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the National Association of Securities Dealers, Inc., are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

[18] However, such non-U.S. index components, as ''NMS stocks,'' would be registered under Section 12 of the Act and listed and traded on a national securities exchange or Nasdaq, where there is last sale reporting.

[19] Amex Rule 900C(b)(1) defines ''broad stock index group'' to mean a stock index group relating to a stock index which reflects representative stock market values or prices of a broad segment of the stock market.

[20] The Amex has set forth its interpretation of the term ''major market data vendor'' for the purposes of Commentary .02(a)(11) to Amex Rule 901C to include the OPRA and the CTA, as well as other securities information processors. *See* Amendment No. 3, *supra* note 5.

[21] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a Chicago Board Options Exchange, Incorporated proposal to establish opening price settlement for S&P 500 Index options).

Rule 901C should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted. The proposed rule change should also reduce instances where an index option listed on the Exchange is temporarily out of compliance with the concentration limits set forth under Commentary .03 to Amex Rule 901C because of changes in the market value of the underlying index components. Lastly, the Commission believes that that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a single security or a small number of securities to dominate an index.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the ISE.[22] In addition, the proposal implements concentration limits for narrow-based index options substantially identical to those previously approved for the Philadelphia Stock Exchange, Inc., which were subject to the full comment period with no comments received,[23] and for the ISE, which were approved by the Commission on an accelerated basis.[24]

The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[25] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–Amex–2005–069), as amended, is hereby approved on an accelerated basis.

[22] *See* Securities Exchange Act Release No. 52578 (October 7, 2005); 70 FR 60590 (October 18, 2005).

[23] *See* Securities Exchange Act Release No. 50945 (December 29, 2004), 70 FR 1498 (January 7, 2005).

[24] *See supra* note 10.

[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6447 Filed 11–22–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52782; File No. SR–Amex–2004–74]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Commentary .01(5) to Amex Rule 916 and Amendment to Amex Rules Relating to the Definition of ''NMS Stock''

November 16, 2005.

On August 27, 2004, the American Stock Exchange LLC (''Amex'') 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 Commentary .01(5) to Amex Rule 916 (''Commentary .01(5)''). The proposal would permit the opening of new option series on an underlying security previously approved for Amex option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 26, 2005, Amex amended the proposal to replace the term ''national market system security'' with the term ''NMS stock'' in its rules for consistency with Regulation NMS.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.[4] The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.[5] The Commission believes that the elimination of Commentary .01(5) is consistent with section 6(b)(5) of the Act,[6] which requires that 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 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.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Commentary .01(5) prevents Amex from opening new series of options covering the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that may more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination of Commentary .01(5) could help reduce investor confusion arising from inconsistent treatment of the underlying security and options covering the underlying security. Finally, the Commission notes that pursuant to Amex rule, the underlying security will not be deemed to meet Amex's requirements for continued approval if such underlying security is not subject to an effective transaction reporting plan and other requirements that address the liquidity and pricing of the underlying security.[7] Amex has represented it has procedures in place to monitor whether the underlying security continues to trade or is delisted from its primary market and will cease opening new series of options in such security and allow the existing series of options to expire. Amex has also represented that if the underlying security has been halted or suspended in its primary market, Amex may halt trading in the option class pursuant to Amex Rule 918(b) and shall halt trading pursuant to

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex proposed to amend Amex Rule 915(a) and Commentary .01(6) to Amex Rule 916, in order to substitute the term ''NMS stock'' for the term ''national market system security,'' for consistency with Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[4] *See* Securities Exchange Act Release No. 52563 (October 4, 2005), 70 FR 59380.

[5] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* proposed Commentary .01(5) to Amex Rule 916 (currently Commentary .01(6) to Amex Rule 916).

Amex Rule 117. The Commission expects Amex to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options covering such security.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2004–74), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6448 Filed 11–22–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52779; File No. SR–CBOE–2004–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Deletion of Interpretation and Policy .01(e) to CBOE Rule 5.4

November 16, 2005.

On July 1, 2004, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 delete Interpretation and Policy .01(e) to CBOE Rule 5.4 (''Interpretation .01(e)''). The proposal would permit the opening of new option series on an underlying security previously approved for CBOE option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 21, 2005, CBOE amended the proposal to replace the term ''national market system security'' with the term ''NMS stock'' in its rules for consistency with Regulation NMS.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 12, 2005.[4] The Commission received no comments on the proposal.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.[5] The Commission believes that the elimination of Interpretation .01(e) is consistent with Section 6(b)(5) of the Act,[6] which requires that 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 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.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Interpretation .01(e) prevents CBOE from opening new series of options on the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination Interpretation .01(e) could help reduce investor confusion arising from inconsistent treatment of the underlying security and option. The Commission notes that, pursuant to CBOE rules, the underlying security will not be deemed to meet CBOE's requirements for continued listing if such underlying security is not subject to an effective transaction reporting plan, and other requirements that address the liquidity and pricing of the underlying security.[7] Finally, the Commission notes that CBOE has stated that it will monitor the listing status of the underlying security and, pursuant to Interpretation and Policy .01(f) to CBOE Rule 5.4, no longer approve an underlying security for the listing of new option series when the issue is delisted from trading. The Commission expects CBOE to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options on such security.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2004–37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6449 Filed 11–22–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52784; File No. SR–DTC–2005–08]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the New Canadian Link Service

November 16, 2005.

I. Introduction

On July 27, 2005, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2005–08 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 30, 2005, DTC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 26, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will allow participants of DTC and participants of The Canadian Depository for Securities Limited (''CDS'') (i) to clear and settle securities transactions in Canadian dollars and (ii) to transfer or receive Canadian dollars without any

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[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] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange conformed the definition of ''NMS security'' in CBOE Rules 5.3(a)(1) and Interpretation .01(f) of Rule 5.4 to that found in Regulation NMS. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[4] *See* Securities Exchange Act Release No. 52562 (October 4, 2005), 70 FR 59382.

[5] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Interpretation and Policy .01 to CBOE Rule 5.4.

[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] Securities Exchange Act Release No. 52471, (September 19, 2005), 70 FR 56196.

corresponding delivery or receipt of securities.

1. Overview of the Canadian-Link Service

The proposed rule change creates a new DTC service, the Canadian-Link Service, that will facilitate the clearance and settlement of valued securities transactions and the transfer of funds denominated in Canadian dollars between DTC's Participants using the Canadian-Link Service (''Canadian-Link Participants'') and CDS Participants and between Canadian-Link Participants and other Canadian-Link Participants. Currently, DTC processes transactions in U.S. dollars only. The Canadian-Link Service will:

(1) Create a new link between DTC and CDS to leverage the existing CDS infrastructure for clearing and settling valued securities transactions and transferring funds in Canadian dollars so that DTC will not have to replicate this infrastructure;

(2) Apply enhanced DTC risk management controls to the transactions processed for Canadian-Link Participants through the Canadian-Link Service and will also subject DTC to CDS risk management controls, which are similar in most respects to DTC risk management controls; and

(3) Permit DTC Participants to concentrate their securities positions at DTC and not bifurcate inventory between DTC and CDS or a Canadian custodian.

At the present time, CDS maintains a number of links with DTC and the National Securities Clearing Corporation (''NSCC''). These links include:

(1) The American and Canadian Connection for Efficient Securities Settlement (''ACCESS'') Service which enables CDS Participants to clear and settle transactions with DTC Participants through omnibus accounts maintained by CDS with DTC and NSCC.[3] CDS Participants that use the ACCESS Service are not participants or members of DTC or NSCC and CDS does not maintain or sponsor individual accounts at DTC or NSCC for such CDS Participants.

(2) The New York Link Service which enables CDS Participants to clear and settle transactions with DTC Participants through sponsored accounts maintained by CDS with DTC and NSCC. Through such sponsored accounts, CDS Participants may clear and settle transactions on a trade for trade basis or on a continuous net settlement basis through the facilities of DTC and NSCC.

(3) The DTC Direct Link Service which enables CDS Participants to clear and settle transactions with DTC Participants through sponsored accounts maintained by CDS with DTC. Through such sponsored accounts, CDS Participants may clear and settle their transactions on a trade for trade basis through the facilities of DTC.

At the present time, DTC maintains no comparable links with CDS although DTC Participants may use the ACCESS Service of CDS for free deliveries of securities to and from CDS Participants. With the implementation of the Canadian-Link Service by DTC, Canadian-Link Participants will have the same ability to clear and settle valued securities transactions with CDS Participants and other Canadian-Link Participants in Canadian dollars that CDS Participants now have to clear and settle valued securities transactions with DTC Participants in U.S. dollars. As noted above, this will be accomplished using the existing CDS infrastructure for processing transactions in Canadian dollars together with enhanced DTC risk management controls.

2. The DTC Omnibus Account

DTC, as a participant of CDS, will maintain at CDS a ledger consisting of a series of accounts, including a securities account to record securities held by CDS for DTC and securities to be delivered by DTC to CDS and a funds account to record the net amount of money owing from time to time intraday between DTC and CDS. Such ledger and the accounts included in the ledger are referred to collectively as the ''DTC Omnibus Account.''

The DTC Omnibus Account will be subject to all CDS risk management controls, including the full collateralization of securities transactions, subject to appropriate haircuts, and limits on allowable net debits. DTC will be the account party on the DTC Omnibus Account. As a participant of CDS, DTC will be liable to CDS with respect to transactions processed for Canadian-Link Participants through the DTC Omnibus Account. Such obligations of DTC to CDS will in turn be matched by the obligations of Canadian-Link Participants to DTC with respect to such transactions. As an operational matter, DTC will act as a conduit between Canadian-Link Participants and CDS by transmitting to CDS information and instructions received from Canadian-Link Participants and by transmitting to Canadian-Link Participants information and instructions received from CDS. CDS and Canadian-Link Participants will not have a direct relationship with each other.

The DTC Omnibus Account will have its own (i) collateral requirements and controls and net debit requirements and controls, (ii) settlement obligations, and (iii) line of credit from a Canadian bank that is a CDS Participant to secure the settlement obligations of DTC to CDS. In accordance with the Rules and Procedures of CDS, DTC will be a member of a credit ring with certain other CDS Participants.[4] Although DTC will take instructions from Canadian-Link Participants with respect to their transactions with CDS Participants through the Canadian-Link Service, DTC will at all times maintain control over the securities and funds credited to the DTC Omnibus Account.

Transactions will be processed in the CDS system on each day that CDS is open for business (''CDS Business Day'') whether or not such day is a day that DTC is open for business (''DTC Business Day'').

3. Transactions Processed Through the Canadian-Link Service

Transactions between Canadian-Link Participants and CDS Participants will be processed through the DTC Omnibus Account in accordance with the Rules and Procedures of CDS. Canadian-Link Participants will be able (i) to deliver securities to or receive securities from CDS Participants against payment in Canadian dollars and (ii) to transfer funds to or receive funds from CDS Participants in Canadian dollars without any corresponding delivery or receipt of securities.

Transactions between Canadian-Link Participants and other Canadian-Link Participants will be processed through accounts at DTC in accordance with the Rules and Procedures of DTC. Canadian-Link Participants will be able to (i) deliver securities to or receive securities from other Canadian-Link Participants against payment in Canadian dollars and (ii) transfer funds to or receive funds from other Canadian-Link Participants in Canadian dollars without any corresponding delivery or receipt of securities.

[3] CDS has advised DTC that it has decided to terminate the ACCESS Service and to transfer its users to the New York Link Service. However, the ACCESS Service will continue to be available to DTC Participants for free deliveries of securities to and from CDS Participants.

[4] CDS has advised DTC that (i) DTC will be required to be a member of the Non-Contributing Receivers Credit Ring for Canadian Dollar Settlements, (ii) the only claims that could be made against DTC as a member of this credit ring involve very unusual events, and (iii) no claim has ever been made by CDS against any member of this credit ring.

For both transactions between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account and transactions between Canadian-Link Participants and other Canadian-Link Participants processed through accounts at DTC, there will be a single end-of-day Canadian dollar money settlement between DTC and its Canadian-Link Participants (''Canadian-Link Money Settlement''). For the transactions between Canadian-Link Participants and CDS Participants processed through the DTC Omnibus Account, there will be a separate end-of-day Canadian dollar money settlement between CDS and DTC.

4. Eligibility of Participants and Securities

All DTC Participants will be eligible to be Canadian-Link Participants and use the Canadian-Link Service, provided that they comply with (i) the Rules and Procedures of DTC, (ii) the Rules and Procedures of CDS, and (iii) all agreements between DTC and CDS relating to the participation of DTC in CDS. (Such agreements together with the Rules and Procedures of CDS will be referred to as the ''Canadian-Link Documents'').

DTC will determine what securities will be eligible for the Canadian-Link Service (''Canadian-Link Securities''). Some securities may be eligible for all purposes of the Canadian-Link Service and some securities may be eligible only for limited purposes (*e.g.*, clearance and settlement through the facilities of CDS but only custody and asset servicing through the facilities of DTC). In no case will a security be eligible for the Canadian-Link Service if the issuer is on an OFAC list of specially designated nationals and blocked persons or is incorporated in a jurisdiction on an OFAC list of sanctioned countries. As is the case with securities processed through the facilities of DTC, it will be DTC rather than CDS that will monitor such compliance with OFAC regulations.

5. Enhanced DTC Risk Management Controls

Each Canadian-Link Participant will be required to make an additional required cash deposit to the DTC Participants Fund (''Canadian-Link Required Participants Fund Deposit''). The amount of the Canadian-Link Required Participants Fund Deposit will be determined by a formula that will be fixed by DTC and will be set forth in DTC's procedures. For all purposes of the Rules and Procedures of DTC, the Canadian-Link Required Participants Fund Deposit of a Canadian-Link Participant will be considered a part of the Required Participants Fund Deposit of such Participant and will secure all of the obligations of such Participant to DTC, including transactions processed for such Participant through the Canadian-Link Service and other transactions processed by DTC for such Participant.

Each Canadian-Link Participant will be assigned a net debit cap on the transactions that may be processed for such Participant through the Canadian-Link Service (''Canadian-Link Net Debit Cap''). The Canadian-Link Net Debit Cap of a Canadian-Link Participant will be determined by a formula that will be fixed by DTC and will be set forth in DTC's procedures. Under existing DTC Rules, which will not be affected by new DTC Rule 30, which governs the Canadian-Link Service, each DTC Participant is assigned a Net Debit Cap on the transactions that may be processed for such Participant through the facilities of DTC (*i.e.*, a limit on the negative funds balance that may from time to time be incurred with respect to its Canadian-Link funds transactions). The Canadian-Link Net Debit Cap of a Canadian-Link Participant and not its Net Debit Cap will apply to the transactions of such Participant processed through the Canadian-Link Service, including both transactions with CDS Participants processed for such Participant through the DTC Omnibus Account and transactions with other Canadian-Link Participants processed for such Participant through accounts at DTC. The Net Debit Cap of a Canadian-Link Participant and not its Canadian-Link Net Debit Cap will apply to all other transactions processed by DTC for such Participant.

Each Canadian-Link Participant will have a single Collateral Monitor with respect to transactions processed for such Participant through the Canadian-Link Service and other transactions processed by DTC for such Participant. For purposes of the Canadian-Link Service, the Collateral Monitor of a Canadian-Link Participant will be adjusted as follows:

(1) Canadian dollar net credits from transactions processed for such Participant through the Canadian-Link Service will be converted into U.S. dollar equivalents and added to U.S. dollar net credits from other transactions processed by DTC for such Participant;

(2) Canadian dollar net debits from transactions processed for such Participant through the Canadian-Link Service will be converted into U.S. dollar equivalents and added to U.S. dollar net debits from other transactions processed by DTC for such Participant;

(3) The Collateral Value of Canadian-Link Securities delivered by such Participant to CDS Participants through the DTC Omnibus Account and the Collateral Value of Canadian-Link Securities delivered by such Participant to other Canadian-Link Participants through accounts at DTC will be converted into U.S. dollar equivalents and deducted from the Collateral Value of the collateral of such Participant; and

(4) Collateral Value in U.S. dollars will be given for Canadian-Link Securities received by such Participant from other Canadian-Link Participants but no Collateral Value will be given for Canadian-Link Securities received by such Participant from CDS Participants unless and until such securities are credited to an account of such Participant at DTC.

6. Instructions for Transactions Processed Through the Canadian-Link Service

A Canadian-Link Participant may give DTC an instruction to clear and settle a securities transaction or to effect a funds transaction between such Participant and a CDS Participant as follows:

(1) An instruction from a Canadian-Link Participant to DTC to clear and settle a delivery of Canadian-Link Securities to a CDS Participant will constitute an instruction for DTC (i) to report or to confirm as appropriate the details of the transaction to CDS for processing in the CDS system and (ii) to transfer the securities subject to such instruction from an account of such Participant at DTC to the DTC Omnibus Account for the purpose of making such delivery on the settlement date;

(2) An instruction from a Canadian-Link Participant to DTC to clear and settle a receipt of Canadian-Link Securities from a CDS Participant will constitute an instruction for DTC (i) to report or to confirm as appropriate the details of the transaction to CDS for processing in the CDS system and (ii) to transfer subject to CDS risk management controls the securities subject to such instruction from the DTC Omnibus Account to an account of such Participant at DTC on the settlement date;

(3) An instruction from a Canadian-Link Participant to DTC with respect to a payment of Canadian dollars to a CDS Participant without any corresponding receipt of Canadian-Link Securities will constitute an instruction for DTC to report or confirm as appropriate the details of the transaction to CDS for processing in the CDS system; and

(4) An instruction from a Canadian-Link Participant to DTC with respect to a receipt of Canadian dollars from a CDS Participant without any corresponding delivery of Canadian-Link Securities will constitute an instruction for DTC to report or confirm as appropriate the details of the transaction to CDS for processing in the CDS system.

A Canadian-Link Participant may give DTC an instruction to clear and settle a securities transaction or effect a funds transaction with another Canadian-Link Participant as follows:

(1) An instruction from a Canadian-Link Participant to DTC to clear and settle a delivery of Canadian-Link Securities to another Canadian-Link Participant will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to debit the securities from an account of the delivering Participant at DTC and to credit the securities to an account of the receiving Participant at DTC and (iii) credit the delivering Participant and to debit the receiving Participant the contract price of the securities in Canadian-Link Money Settlement;

(2) An instruction from a Canadian-Link Participant to DTC to clear and settle a receipt of Canadian-Link Securities from another Canadian-Link Participant will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to credit the securities to an account of the receiving Participant at DTC and to debit the securities from an account of the delivering Participant at DTC, and (iii) to debit the receiving Participant and to credit the delivering Participant the contract price of the securities in Canadian-Link Money Settlement;

(3) An instruction from a Canadian-Link Participant to DTC with respect to the payment of Canadian dollars to another Canadian-Link Participant without any corresponding receipt of Canadian-Link Securities will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to debit the paying Participant and to credit the receiving Participant the appropriate amount of funds in Canadian-Link Money Settlement;

(4) An instruction from a Canadian-Link Participant to DTC with respect to the receipt of Canadian dollars from another Canadian-Link Participant without any corresponding delivery of Canadian-Link Securities will constitute an instruction for DTC (i) to match the details of such transaction and (ii) if such details match, to credit the paying Participant and to debit the receiving Participant the appropriate amount of funds in Canadian-Link Money Settlement.

All valued securities transactions processed through the Canadian-Link Service will be settled trade for trade on a delivery against payment basis.

7. The Settlement of Transactions Processed Through the Canadian-Link Service

On each CDS Business Day, CDS will give DTC a recap of all transactions processed for DTC through the DTC Omnibus Account on such CDS Business Day and the net amount of money that CDS owes DTC or that DTC owes CDS with respect to such transactions. In turn, DTC will give each Canadian-Link Participant a recap of the transactions processed for such Participant through the Canadian-Link Service on such CDS Business Day, including transactions with CDS Participants processed for such Participant through the DTC Omnibus Account and transactions with other Canadian-Link Participants processed for such Participant through accounts at DTC, and the net amount of money that DTC owes such Participant or that such Participant owes DTC with respect to such transactions. Then, in the following order, (i) Canadian-Link Participants with net settlement debits will pay DTC the amounts of such net settlement debits, (ii) DTC will pay CDS the amount of any net settlement debit owing to CDS or CDS will pay DTC the amount of any net settlement credit owing to DTC, and (iii) DTC will pay Canadian-Link Participants with net settlement credits the amounts of such net settlement credits. However, the amount of any net settlement credit owing to a Canadian-Link Participant with respect to transactions processed for such Participant through the Canadian-Link Service may be withheld and applied to any obligation of such Participant to DTC or to any obligation of DTC to another registered clearing agency with respect to such Participant. DTC will not be required to make any payment to Canadian-Link Participants with net settlement credits unless and until DTC receives payment from all Canadian-Link Participants with net settlement debits and payment of any net amount of money that CDS owes DTC.

If a Canadian-Link Participant fails to pay any Canadian dollar net settlement debit with respect to the transactions processed for such Participant through the Canadian-Link Service. DTC may apply the DTC Participants Fund to cover any shortfall in its settlement obligations to CDS. If the day of such default is a DTC Business Day, DTC may either:

(1) Declare such Participant to be a Defaulting Participant, in which case DTC will have all of its rights and remedies under the Rules and Procedures of DTC, including the right to sell or to pledge (i) all securities credited to the DTC Omnibus Account at CDS for delivery to the Defaulting Participant, which securities are owned by DTC until they are paid for by the Participant, (ii) all securities provisionally credited to an account of the Defaulting Participant at DTC against payment, which securities are owned by DTC until they are paid for by the Participant, and (iii) all securities which are designated as additional Collateral by the Defaulting Participant pursuant to the Rules and Procedures of DTC; or

(2) Translate the amount of such Canadian dollar net settlement debit into a U.S. dollar amount that will be added to or subtracted from, as the case may be, the U.S. dollar net settlement debit or credit of such Participant with respect to other transactions processed for such Participant through the facilities of DTC on that day and if as a result of this process such Participant has a net-net settlement debit with respect to all transactions processed for such Participant and fails to pay such net-net settlement debit to DTC, DTC may declare such Participant to be a Defaulting Participant and will have all of its rights and remedies under the Rules and Procedures of DTC, including the rights and remedies described above.

If the day of such default is not a DTC Business Day and as a result the amount of such Canadian dollar net settlement debit cannot be included in the calculation of the settlement obligations of such Participant with respect to other transactions processed by DTC for such Participant on that day, DTC will deem such Participant to be a Defaulting Participant, and DTC will have all of its rights and remedies under the Rules and Procedures of DTC, including the rights and remedies described above. Any amounts withdrawn from the DTC Participants Fund to cover a shortfall in the settlement obligations of DTC to CDS will be restored to the Participants Fund (i) from any payments subsequently received by DTC from the Defaulting Participant and (ii) from any amounts derived by DTC from the operation of its failure to settle procedures and loss allocation rules.

8. Additional Matters

As a member of CDS, DTC must observe and comply with the Canadian-

Link Documents. Each Canadian-Link Participant, in order to use the Canadian-Link Service, acknowledges that (i) all transactions processed for such Participant though the facilities of CDS are subject to the Canadian-Link Documents, (ii) the Canadian-Link Documents may include grants of security interests in and liens on securities and funds in the CDS system in which such Participant has an interest, (iii) there are other provisions of the Canadian-Link Documents that could also affect the interest of such Participant in such securities and funds, and (iv) in the event of any conflict between the Rules and Procedures of DTC, which are a contract between DTC and DTC Participants, and the Canadian-Link Documents, which are a contract between DTC and CDS, the requirements of the Canadian-Link Documents will prevail.

9. Fees

DTC is proposing to charge its Canadian-Link Participants the following fees. The fee schedule is set forth in section 23 of the Canadian-Link Service Guide.[5] All fees will be collected in U.S. dollars through the existing U.S. dollar settlement system and will be uniquely identified on the DTC U.S. dollar settlement statement bill. The proposed fees are as follows:

(1) Deliver Order Fees

DTC will charge $2.00 U.S. per submitted Canadian dollar delivery/receive, recall transaction resulting from the automatic recall process, cancel instruction, and modify instruction. DTC will not charge for hold instructions of Canadian dollar deliveries/receives, DK instructions, confirm instructions, or end-of-day sweep transactions.

(2) Payment Order Fees

DTC will charge $2.00 U.S. per submitted Canadian dollar payment order delivery/receive, cancel instruction, and modify instruction. DTC will not charge for hold instructions of Canadian dollar payment order deliveries/receives, DK instructions, or confirm instructions.

(3) Asset Servicing/Custody Fees

DTC will charge for asset servicing and custody services on all Canadian and U.S. securities at the existing DTC Asset Servicing/Custody fees.

[5] Section 23 of the Canadian-Link Service Guide is attached as Exhibit 2 to DTC's filed proposed rule change.

III. Discussion

Section 17A of the Act sets forth the regulatory framework for the national system for clearance and settlement of securities transactions and provides the requirements a clearing agency must meet in order to be registered with the Commission. Although the proposed rule change concerns the linkage of DTC and CDS to facilitate the clearance, settlement, and custody of Canadian securities and payments of Canadian dollars by DTC participants, it is consistent with the general purpose of section 17A to promote the perfection of a system for the prompt and accurate clearance and settlement of securities transactions. Furthermore, the proposed rule change is consistent with DTC's other cross border services that link CDS with DTC to facilitate the clearance and settlement of transactions executed by CDS participants in U.S. dollars.

Section 17A(a)(1)(D) of the Act provides in general that the linking of clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement reduces unnecessary costs and increases the protection of investors and persons facilitating transactions by and acting on behalf of investors.[6] The Canadian-Link Service will take advantage of existing connectivity between DTC and CDS to increase efficiencies and to reduce costs for DTC participants and ultimately investors with respect to the clearance and settlement of Canadian dollar transactions. Additionally, new DTC Rule 30 will establish detailed procedures for the Canadian-Link Service that will provide certainty and reliability with respect to these transactions and will apply to all Canadian-Link Participants. As a result, the proposed rule change is consistent with the directives in sections 17A(a)(1)(D) because it should reduce unnecessary costs by providing increased efficiencies for DTC participants and because it should create uniform standards for the clearance and settlement of securities transactions by establishing procedures for Canadian dollar transactions processed through DTC.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Most DTC participants currently clear and settle their Canadian securities transactions in Canadian dollars by using a custodian bank in Canada as a settlement agent at CDS. The proposed rule change is designed to streamline the clearance and settlement process of Canadian dollar transactions for DTC participants by centralizing the process at DTC and by establishing rules and procedures for Canadian Link Participants. By leveraging the existing linkage between DTC and CDS, by using the existing rules and procedures of DTC and CDS, and by establishing new rules and procedures for the Canadian-Link Service, DTC has put in place sufficient procedures so that it should be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The Commission also considered whether the fact that under the proposal DTC will be required to become a member of a clearing agency that is neither registered with nor regulated by the Commission (*i.e.,* CDS) would be inconsistent with DTC's statutory obligations under section 17A or would present unacceptable risks to DTC or its participants. As a member of CDS and as an intermediary for its Canadian-Link Participants, DTC will be subject to CDS's rules and procedures and will bear the initial financial burden if CDS or a Canadian-Link Participant fails to meet its settlement obligations. Also, DTC will be required to be a member of CDS's Non-Contributing Receivers Credit Ring. Accordingly, the Commission has focused part of its review of DTC's proposal on CDS itself and on DTC's risk management procedures related to the Canadian-Link Service.

CDS is the sole central securities depository organized in the Canadian market and is regulated in Canada at the Federal and provincial level. CDS has been a member of DTC since 1979. As a participant of DTC, CDS is required to meet DTC's financial and capital requirements and is subject to DTC's risk management evaluation and review.[7] As a result, DTC has previously evaluated and is familiar with CDS's financial and organizational soundness. CDS conducts its clearance and settlement services pursuant to a published rulebook and has risk management procedures in place that are similar to and in some cases more conservative than DTC's risk management procedures. For example, CDS requires that all positions be fully collateralized with a bank line of credit, and it has limited membership

[6] 15 U.S.C. 78q–1(a)(1)(D).

[7] CDS has also been a member of NSCC since 1984 and is subject to NSCC's risk management evaluation and review.

categories and credit rings so that a participant will not share in a financial loss related to a service in which it does not participate. Furthermore, DTC provided the Commission with the materials it used to analyze the risks associated with the Canadian-Link Service and represented that in its risk analysis it found neither any unacceptable risk related to DTC becoming a member in CDS nor any other cause for concern regarding the proposed rule change. Accordingly, the Commission finds that neither DTC nor its participants should be exposed to any undue risks or burdens as a result of DTC's membership in CDS or DTC's offering the Canadian-Link Service.

Based on the DTC's history with CDS, the regulatory oversight and risk management framework of CDS's operations, and the risk analysis DTC performed with respect to the proposed rule change, the Commission is satisfied that DTC has taken adequate steps to design the Canadian-Link Service so that it can be offered by DTC in a manner that enables DTC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2005–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6458 Filed 11–22–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52786; File No. SR–NASD–2005–011]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Limit the Eligibility for Quotation on the OTCBB of the Securities of an Issuer That Is Repeatedly Delinquent in Its Periodic Reporting Obligations

November 16, 2005.

I. Introduction

On January 28, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 limit the eligibility for quotation on the Over-the-Counter Bulletin Board (''OTCBB'') of the securities of an issuer that is repeatedly late or otherwise delinquent in filing required periodic reports.[3] Nasdaq submitted Amendment No. 1 to this filing on May 10, 2005.[4] Nasdaq submitted Amendment No. 2 to this filing on June 24, 2005.[5] Nasdaq submitted Amendment No. 3 to this filing on August 15, 2005.[6] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 24, 2005.[7] The Commission received one comment letter on the proposal.[8] Nasdaq[9] and the NASD[10] each responded to the comment letter. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Pursuant to current NASD Rule 6530 (the ''Eligibility Rule''), for an issuer's securities to be eligible and remain eligible for quotation on the OTCBB by an NASD member, the issuer must be current in its filings with the Commission or other appropriate regulator.[11] When a security becomes ineligible for quotation on the OTCBB due to the Eligibility Rule, either because a required periodic filing is not made or because a filing is incomplete,[12] Nasdaq appends an additional character ''E'' designator to the security's symbol.[13] If the issuer does not comply within the applicable grace period provided by the Eligibility Rule (typically 30 days),[14] the Rule prohibits NASD members from quoting the issuer's securities on the OTCBB.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that subsequent to publication of the Notice, the Commission approved the NASD's proposal to amend its Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, as well as certain corresponding NASD rules, to permit the NASD to assume direct authority for over-the-counter (''OTC'') equity operations, including the OTCBB, rather than continuing to delegate this authority to Nasdaq. Nasdaq, however, will continue to furnish the OTCBB quotation and trade reporting platform and certain other services that it provided with respect to over-the-counter equity operations. *See* Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (SR–NASD–2005–089).

[4] Amendment No. 1, which replaced the original filing in its entirety, made clarifying changes to the proposal's rule text; provided greater detail regarding how Nasdaq would notify issuers about the proposed rule; and stated that the proposed rule would be implemented for those filings for periods ending on or after June 1, 2005.

[5] Amendment No. 2, which replaced the original filing and Amendment No. 1 in their entirety, further clarified the proposal's rule text; and amended the proposal's rule text to provide that filings for reporting periods ending before June 1, 2005, would not be considered for purposes of the proposed rule change.

[6] Amendment No. 3, which supplemented the filing as modified by Amendment No. 2, amended the proposal's rule text to provide that filings for reporting periods ending before October 1, 2005, would not be considered for purposes of the proposed rule change.

[7] *See* Securities Exchange Act Release No. 52291 (August 18, 2005), 70 FR 49701 (''Notice'').

[8] *See* E-mail from John Meade to *rule-comments@sec.gov*, dated September 14, 2005.

[9] *See* Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 29, 2005.

[10] *See* Letter from Andrea Orr, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 14, 2005.

[11] *See* Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR–NASD–98–51).

[12] In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS–100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). *See*, *e.g.*, Rule 13a–14 under the Act, 17 CFR 240.13a–14, and Rules 10–01(d) and 2–02(c) of Regulation S–X, 17 CFR 210.10–01(d) and 210.2–02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. *See* section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

[13] Nasdaq also appends an ''E'' to a security's symbol when it fails to receive notice that an issuer, which files with a regulator other than the Commission, has timely filed. In the case of those issuers, the Nasdaq generally receives notice of a regulatory filing from the applicable market maker or the issuer itself, and will investigate any instance where it has not received such notice. *See* Telephone conversation between Tim Fox, Attorney, Commission, and Arnold Golub, Associate Vice President, Nasdaq on May 20, 2005.

[14] The Eligibility Rule provides a 60-day grace period to banks, savings association and insurance companies that do not file with the Commission, but are required to file with other regulators. *See* NASD Rule 6530(a)(3) and (4).

Nasdaq notes that approximately 80% of issuers achieve compliance within the applicable grace period, while 20% are removed from quotation on the OTCBB.

Nasdaq reports that it has identified a high level of non-compliance with the Eligibility Rule. Specifically, over the two-year period ended August 31, 2004, Nasdaq identified over 3,000 instances of delinquent or otherwise incomplete filings by 1,806 OTCBB issuers, of which 1,067 were still quoted as of August 31, 2004. Of the 1,806 issuers, 1,035 were late in filing one time, 548 issuers were delinquent twice and 223 were delinquent three or more times. Given the high rate of recidivism, Nasdaq has proposed to amend NASD Rule 6530(e) to make certain OTCBB securities ineligible for quotation on the OTCBB for a period of one year. Specifically, the proposed rule change would prohibit NASD members from quoting on the OTCBB the securities of OTCBB issuers that have been delinquent in their filing obligations on the number of occasions and within the time frame specified in the proposed rule, as described below. Nasdaq has proposed to implement the rule change in connection with filings for reporting periods ending on or after October 1, 2005.[15]

Under proposed NASD Rule 6530(e)(1), an NASD member would be prohibited from quoting on the OTCBB for a period of one year the securities of those OTCBB issuers that submit a required filing late or in an incomplete form three times in the prior two-year period while the security was quoted on the OTCBB.[16] Accordingly, the securities of an OTCBB issuer would become ineligible for quotation on the OTCBB on the third time in the prior two-year period that the issuer does not file in complete form a required periodic report by the due date (including, if applicable, any extensions permitted by Rule 12b–25 under the Act,[17] but without the benefit of any grace period for this third delinquency).[18] In applying the look-back associated with this provision, Nasdaq would consider reports characterized by due dates (including, if applicable, any extensions permitted by Rule 12b–25 under the Act) that fell within the prior two-year period.

Under proposed NASD Rule 6530(e)(2), an NASD member would be prohibited from quoting on the OTCBB for a period of one year the securities of those OTCBB issuers that are removed from the OTCBB due to the issuer's failure to satisfy paragraphs (a)(2), (3) or (4) of NASD Rule 6530 twice in the prior two-year period.[19] According to Nasdaq, the more stringent test for this category reflects the greater length of the filing delinquencies, *i.e.*, these issuers were unable to regain compliance even within the applicable ''grace'' period. In applying the look-back associated with this provision, Nasdaq would consider the date the security is removed, without regard to when the delinquent reports were actually due.

Under the proposed rule change, as amended, only filings for which the grace period ends while the issuer's securities are quoted on the OTCBB would be considered.[20] Once they become ineligible for quotation on the OTCBB because the conditions in NASD Rule 6530(e)(1) or (e)(2) have occurred, the securities of an OTCBB issuer would not become eligible for re-inclusion on the OTCBB until the issuer has timely filed in a complete form all required annual and quarterly reports for a period of one year. Thus, the securities of, for example, most domestic issuers would not be eligible for re-inclusion until the issuer has timely filed at least one Form 10–K and three Forms 10–Q. While a late filing during the period when an issuer is ineligible for quotation on the OTCBB would reset the ineligibility period, once an issuer that is removed for failure to satisfy NASD Rule 6530(e)(1) or (e)(2) is re-included, Nasdaq would not consider late filings due prior to the date of re-inclusion under the proposed rule.

Finally, Nasdaq has proposed to clarify its current position that the 60-day grace period applicable to banks and savings associations also applies to holding companies for such entities. Nasdaq believes that this clarification is appropriate because, like banks and savings associations, these holding companies must also file publicly available periodic reports with the appropriate state or federal regulator.

III. Summary of Comments and the Nasdaq's and NASD's Response

The Commission received one comment in response to the proposed rule change, as amended.[21] The commenter urged the Commission and the NASD to ''start properly regulating the smallcap market.'' Specifically, the commenter advocated that all public companies, regardless of size, be required to file periodic financial reports. In addition, the commenter recommended that if a reporting issuer is delinquent with respect to a required filing for 60 days, then trading in its securities should be halted in all venues until such time as it files the late report.

In its response to the comment letter,[22] Nasdaq affirmed the importance of timely filing periodic financial reports. Nasdaq explained that an NASD rule governing the OTCBB already imposes a requirement that all issuers of securities quoted on the OTCBB file periodic reports and be current in those filings with the appropriate regulator. Nasdaq does not believe, however, that halting the trading of the securities of delinquent OTCBB issuers would be appropriate, since other OTC marketplaces, including the Pink Sheets, do not require reporting issuers to be current in their filings. Nasdaq reiterated its view that the proposed rule change strikes an appropriate balance, because it is designed to increase the timeliness of disclosure available to investors and to prevent the securities of issuers who repeatedly fail to comply with their disclosure obligations from being quoted on the OTCBB, subject to an appropriate grace period for companies that only

[15] *See* Amendment No. 3, *supra* note 6. Filings for reporting periods ending before October 1, 2005, would not be considered in determining the applicability of proposed NASD Rule 6530(e).

[16] A filing would not be considered late for the purposes of this proposed rule if it is made within any applicable extensions permitted pursuant to Rule 12b–25 under the Act, 17 CFR 240.12b–25. Nasdaq also appends an ''E'' to a security's symbol when it does not receive notice that an issuer that files with a regulator other than the Commission has timely filed. Nasdaq would not consider such occurrences to be a late filing for purposes of the proposed rule if the issuer did, in fact, timely file with the appropriate regulator. Nonetheless, Nasdaq states that these issuers can help alleviate confusion by providing Nasdaq with a copy of the filing made with the appropriate regulator on or before its due date.

[17] 17 CFR 240.12b–25.

[18] Prior to such removal, Nasdaq intends to provide issuers with 7 calendar days to request review of the determination by a hearings panel. *See* File No. SR–NASD–2005–067, which proposes to clarify the availability of a process to review eligibility determinations under NASD Rule 6530.

[19] An issuer that is not removed because it files a late report after requesting a hearing pursuant to the NASD Rule 9700 Series but before a decision has been issued in the matter would not be considered to have failed to file pursuant to proposed NASD Rule 6530(e)(2), but would be considered to have filed late for purposes of proposed NASD Rule 6530(e)(1).

[20] Thus, for example, an OTCBB-quoted issuer that has no prior late filings fails to file its Form 10–K for the period ended December 31, 2005, prior to the end of the applicable grace period. The issuer is removed from the OTCBB under existing NASD Rule 6530(a)(2), and thereafter also files its Form 10–Q for the period ended March 31, 2006, after the due date. The issuer is subsequently re-included on the OTCBB. Only the late filing for the period ended December 31, 2005, would count for purposes of the proposed rule change because the issuer was not quoted on the OTCBB when the grace period for the March 31, 2006 filing expired. *See* Telephone conversation between Tim Fox, Attorney, Division of Market Regulation, Commission, and Arnold Golub, Associate Vice President, Nasdaq, on August 17, 2005.

[21] *See supra* note 8.

[22] *See supra* note 9.

occasionally experience problems in submitting complete filings in a timely manner.

The NASD also responded to the single comment letter received on the proposal.[23] In its response, the NASD noted, among other things, that it regulates trading in both the OTCBB and the Pink Sheets, and that there are, in certain instances, rules that are applicable only to trading in OTCBB securities. Further, the NASD noted that, as part of the recent transfer of direct authority over the OTCBB from Nasdaq to NASD,[24] the NASD is currently analyzing whether certain distinctions across quotation services in the OTC market are appropriate.

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of section 15A of the Act[25] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[26] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[27]

Under the proposed rule change, the securities of an OTCBB issuer that submits a required periodic filing late or in an incomplete form three times during a two-year period, and the securities of an OTCBB issuer that are removed from the OTCBB as a result of the issuer's failure to file a required report with the appropriate regulatory agency two times in a two-year period, would become ineligible for continued quotation on the OTCBB by an NASD member. The issuer's securities, however, would become again eligible for quotation on the OTCBB when the issuer has timely filed, in a complete form, all required annual and quarterly reports for a one-year period.

In the Commission's view, the proposed rule change is designed to protect investors and the public interest by setting forth conditions upon which an NASD member would be precluded from quoting on the OTCBB for a period of one year the securities of those OTCBB issuers that have failed to meet their reporting obligations on the number of occasions and within the time frame specified in the proposed rule change. The Commission believes that the proposed rule change's imposition of a one-year ban from quotation on the OTCBB upon the issuer's third failure during a two-year period to file a complete required annual or quarterly report by its due date (including any extension permitted by Rule 12b–25 under the Act), or upon the second removal of the issuer's securities from the OTCBB during a two-year period, are designed to foster the timeliness of disclosure available to the public by OTCBB issuers. Once such issuer has timely filed in a complete form all required annual and quarterly reports for a one-year period, its securities would become re-eligible for quotation on the OTCBB.

The Commission believes that the proposal provides measures that are designed to exclude from its applicability those OTCBB issuers that occasionally and inadvertently fail to comply with their reporting obligations. The securities of OTCBB issuers would not be precluded from quotation on the OTCBB, unless the issuer failed to file annual or quarterly reports or filed incomplete reports three times during the prior two-year period or unless the issuer's securities were removed from the OTCBB twice in the prior two-year period due to the issuer's failure to file required reports. A required periodic filing would not be considered delinquent if the issuer files a complete Form 12b–25 with the Commission and submits the report within the applicable time frame specified in Rule 12b–25 under the Act.

With respect to the procedural rights of OTCBB issuers adversely affected by the operation of the proposed rule change, the Commission notes that OTCBB issuers retain the right to initiate the hearing process under NASD Rule 9700 Series, through which an issuer could request a review of an ineligibility determination made pursuant to NASD Rule 6530. Moreover, Nasdaq has represented that it would provide OTCBB issuers that file late or are otherwise delinquent a third time in a two-year period with seven calendar days' notice prior to removal of the issuer's securities from the OTCBB in order to allow the issuer to request a review of the determination by a hearings panel under the NASD Rule 9700 Series. In addition, Nasdaq has represented that, upon implementation, it plans to provide an OTCBB issuer notification whenever Nasdaq determines that the issuer is late in a periodic filing, along with an explanation of the consequences of the OTCBB issuer's delinquent status.[28]

Finally, NASD staff has advised of plans to identify on the OTCBB Web site, *http://www.otcbb.com,* those OTCBB issuers that are subject to removal from quotation on the OTCBB for a one-year period if the issuer fails to satisfy the requirements of NASD Rule 6530(e)(1) or (e)(2). In the event that an issuer's securities are to be removed from the OTCBB because the security has become ineligible for quotation pursuant to NASD Rule 6530(e), the NASD staff has advised of plans to indicate the date on which the issuer's securities no longer will be eligible for quotation on the OTCBB.[29] In the Commission's view, this information will help broker-dealers and investors to ascertain those securities that are at risk of being removed from the OTCBB for a one-year period, if the issuer fails to keep current in its reporting obligations.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–2005–011), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6455 Filed 11–22–05; 8:45 am]

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[23] *See supra* note 10.

[24] *See supra* note 3.

[25] 15 U.S.C. 78*o*–3.

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] Telephone conversation between Arnold Golub, Associate Vice President, Nasdaq and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Tim Fox, Special Counsel, Division of Market Regulation, Commission on November 15, 2005.

[29] Telephone conversation among Arnold Golub, Associate Vice President, Nasdaq, Andrea Orr, Assistant General Counsel, NASD, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission and Tim Fox, Special Counsel, Division of Market Regulation, Commission on November 16, 2005.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52752A; File No. SR–NASD–2004–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Short Sale Delivery Requirements

November 17, 2005.

Correction

In FR Document No. E5–6306, beginning on page 69614 for Wednesday, November 16, 2005, in the first sentence of the first paragraph of the Notice the date should read March 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6457 Filed 11–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52783; File No. SR–OCC–2003–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability With Respect to Clearing Members

November 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on August 18, 2004, amended [2] the proposed rule change as described in Items I, II, and III below, which items have been prepared by OCC. 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

OCC is seeking to establish gross negligence as its comprehensive standard of care and limitation of liability with respect to its clearing members.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1980 in its release setting forth standards for registration of clearing agencies, the Division of Market Regulation stated that it was ''of the view that clearing agencies should undertake to perform their obligations with a high degree of care.'' [5] Later, in 1983 in its release registering nine clearing agencies, the Commission stated that it did ''not believe sufficient justification exists at this time to require a unique federal standard of care for registered clearing agencies.''[6] The Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions. Along this line, in 1986 in its order approving a proposed rule change of the Midwest Securities Trust Company (''MSTC'') to clarify the rights and liabilities of the MSTC and its participants with respect to certain services, the Commission stated:

> The Act does not specify the standard of care that must be exercised by registered clearing agencies and the Commission has determined that imposition of a unique Federal standard of care for registered clearing agencies is not appropriate at this time. [citing Securities Exchange Act Release No. 20221, *supra* note 5] For those reasons the Commission believes that the clearing agency standard of care and the allocation of rights and responsibilities between a clearing agency and its participants applicable to clearing agency services generally may be set by the clearing agency and its participants. The Commission believes it should review clearing agency proposed rule changes in this area on a case-by-case basis and balance the need for a high degree of clearing agency care with the effect resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds.[7]

Because standards of care represent an allocation of rights and liabilities between a clearing agency and its users, which are generally sophisticated financial entities, the Commission has continued to refrain from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their users to establish their own standards of care.[8]

With this proposed rule change, OCC is seeking to establish a comprehensive gross negligence standard of care and limitation of liability with respect to its clearing members and makes the following representations. OCC states in the filing that since its founding in 1973, it has performed its clearing services with an exemplary level of care. Its record of fulfilling its commitments to its clearing members for over 30 years reflects OCC's commitment to serving the best interests of its clearing members. It has comprehensive systems and operating procedures in place to ensure that its clearing functions are executed with the highest level of accuracy. In addition to its own concern for accuracy, it is subject to extensive regulatory oversight by the Commission. Furthermore, in its amendment to the filing, OCC states that gross negligence is the standard of care generally used by other clearing agencies such as the Fixed Income Clearing Corporation, the decision to apply a gross negligence standard of care to OCC is a conscious allocation of risk between OCC and its members, the filing was unanimously approved by OCC's directors, a majority of whom are officers of clearing members, and the proposed rule change in no way will affect the very high level of care to which OCC has always held itself and to which it is held through the regulatory oversight of the Commission.[9] As such, OCC believes

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (August 17, 2005).

[3] OCC's proposed rule change would not affect the regulatory standards (*e.g.*, section 17A of the Act) that apply to OCC or the way in which OCC conducts its clearing agency operations.

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 45167 (June 23, 1980).

[6] Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

[7] Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169 (February 28, 1986).

[8] *See, e.g.*, Securities Exchange Act Release Nos. 51669 (May 9, 2005), 70 FR 25634 (May 13, 2005) [File No. SR–NSCC–2004–09]; 48201 (July 21, 2003), 68 FR 44128 (July 25, 2003) [File No. SR–GSCC–2002–10]; 37563 (August 14, 1996), 61 FR 43285 (August 21, 1996) [SR–PSE–96–21]; and 37421 (July 11, 1996), 61 FR 37513 (July 18, 1996) [SR–CBOE–96–02].

[9] *Supra*, letter from William H. Navin, n. 2.

that a gross negligence standard of care is appropriate for OCC.[10]

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[11] and the rules and regulations thereunder applicable to OCC because it will permit the resources of OCC to be appropriately utilized for promoting the prompt and accurate clearance and settlement of options transactions and for providing for the safeguarding of securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–OCC–2003–13 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–OCC–2003–13. 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 OCC and on OCC's Web site at *http://www.theocc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2003–13 and should be submitted on or before December 14, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6456 Filed 11–22–05; 8:45 am]

BILLING CODE 8010–01–P

[10] Specifically, OCC is proposing to amend Article VI of its By-Laws, ''Clearance of Exchange Transactions,'' by adding new section 25, ''Limitation of Liability,'' which would state:

(a) Notwithstanding any other provision in the By-Laws and Rules, the Corporation will not be liable for any action taken, or any delay or failure to take any action, under the By-Laws and Rules or otherwise, to fulfill the Corporation's obligations to its Clearing Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including, without limitation, any bank or other depository, custodian, sub-custodian, clearing or settlement system, data communication service, or other third party, unless the Corporation was grossly negligent, engaged in willful misconduct, or was in violation of federal securities laws for which there is a private right of action, in selecting such third party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) however suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The U.S. Small Business Administration, Wisconsin District Advisory Council will be hosting a public meeting to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. The meeting will be held on Tuesday, December 13, 2005 starting at 1:30 p.m. The meeting will be held at the U.S. Small Business Administration, Wisconsin-Milwaukee District Office, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin.

Anyone wishing to attend must contact Cindy Merrigan in writing or by fax. Cindy Merrigan, Computer Specialist, U.S. Small Business Administration, 740 Regent Street, Suite 100, Madison, Wisconsin 53715, phone (608) 441–5560, fax (202) 481–0815, e-mail: *cindy.merrigan@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–23125 Filed 11–22–05; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Thailand Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed United States-Thailand Free Trade Agreement (FTA). The interim environmental review is available at

http://www.ustr.gov/Trade_Sectors/Environment/Environmental_Reviews/Section_Index.html. Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested by January 6, 2006 to inform the negotiations and the environmental review of the final agreement.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—Environmental Review of Trade Agreements (64 FR 63169, Nov. 18, 1999) and its implementing guidelines (65 FR 79442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/Trade_Sectors/Environment/Section_Index.html*.

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0423@ustr.eop.gov* with the subject line: ''Thailand Interim Environmental Review.'' Documents should be submitted as a Word Perfect, MSWord, or text (.TXT) file. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 05–23181 Filed 11–22–05; 8:45 am]

BILLING CODE 3190–W6–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 4, 2005

The following Agreements were filed with the Department of Transportation under 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–2005–22906.

Date Filed: November 3, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/TC123 Mail Vote 457 between Middle East and South East Asia Geneva, September 12–14, 2005.

Intended effective date: November 1, 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–23167 Filed 11–22–05; 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 November 4, 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–2002–13159.

Date Filed: October 31, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 21, 2005.

Description: Application of Valley Air Express, Inc. requesting a fitness review to resume service between Victorville, CA and Henderson, NV and, an exemption from the 45 day notice period.

Docket Number: OST–2005–22880.

Date Filed: November 1, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 22, 2005.

Description: Application of Swift Air, LLC requesting a certificate of public convenience and necessity to engage in interstate and foreign air transportation of persons, property and mail.

Docket Number: OST–2005–22882.

Date Filed: November 2, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 23, 2005.

Description: Application of Gazpromavia Aviation Company Ltd. requesting a foreign air carrier permit to engage in charter all-cargo service

between the Russian Federation and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–23166 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2005–22985]

Agency Information Collection Activities; Request for Comments; Renewed Approval of an Information Collection; Environmental Streamlining: Measuring the Performance of Stakeholders in the Transportation Project Development Process II

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 23, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number

- FHWA–2005–22985 by any of the following methods:
- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- 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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kreig Larson, 202–366–2056, Planning and Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Environmental Streamlining: Measuring the Performance of Stakeholders in the Transportation Project Development Process II.

Background: The U.S. Department of Transportation (DOT), FHWA, has contracted with the Gallup Organization to conduct a survey of professionals associated with transportation and resource agencies in order to gather their views on the workings of the environmental review process for transportation projects and how the process can be streamlined. The purpose of the survey is to: (1) Collect the perceptions of agency professionals involved in conducting the decisionmaking processes mandated by the National Environmental Policy Act (NEPA) and other resource protection laws in order to develop benchmark performance measures; and (2) identify where the performance of the process might be improved by the application of techniques for streamlining. This is a phone survey conducted of only local, State, and Federal officials who work with the NEPA process.

Respondents: Approximately 2,000 professionals/officials from transportation and natural resource agencies.

Frequency: This is the second time this survey has been conducted in four years.

Estimated Total Annual Burden Hours: The FHWA estimates that each respondent will complete the survey in approximately 15 minutes. With 2,000 surveys expected, an estimated 500 burden hours are expected for this project.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review 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.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 17, 2005.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 05–23176 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Miami-Dade County, FL

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Miami-Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory E. Williams, P.E., District Transportation Engineer, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303. Telephone: (850) 942–9650, extension 3031.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation (FDOT) will prepare an EIS for a proposal to improve Interstate Route I–395 in Miami-Dade County, Florida. The proposed improvement would involve the reconstruction of I–395 from I–95/Midtown Interchange in Biscayne Bay, a distance of approximately 1.2 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) elevated reconstruction with ramps at Midtown Interchange; (3) elevated reconstruction with ramps at Miami Avenue; (4) a tunnel design; and (5) an open-cut design.

Letters describing the proposed action and soliciting comments will be sent to

appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this project. A series of public meetings will be held in the City of Miami, Miami-Dade County between July 2005 and January 2007. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment.

A formal scoping meeting is planned for the project, and the date and location will be established later.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

Issued on: November 16, 2005.

George B. Hadley,

Environmental Programs Coordinator, Tallahassee, Florida.

[FR Doc. 05–23150 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22970; Notice 1]

Les Entreprises Michel Corbeil Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Les Entreprises Michel Corbeil Inc. (Corbeil) has determined that certain school buses that it produced in 2004 do not comply with S5.1 of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, ''School bus body joint strength.'' Corbeil has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Corbeil has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Corbeil's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 295 school buses produced between May 3, 2004 and June 4, 2004. S5.1 of FMVSS No. 221 requires that,

> * * * each body panel joint * * * when tested in accordance with the procedure of S6, shall hold the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

The longitudinal roof joint on some of the subject school buses fails when tested according to the requirements of S5.1.

Corbeil believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Corbeil states that during the period of production of the subject school buses, ''the production used expired glue.'' Corbeil estimates that 61 of the 295 buses could be affected, based on the number of expired glue cartridges that were used.

Corbeil further states,

> * * * repairs could affect the structural integrity of these buses' roofs. If we proceed with repairs, we must remove the actual MS polymer strips on the roof to reach the joints. This operation requires us to preheat (300–600 °F) the MS polymer strip (will soften the MS polymer) but at the same time will cause a significant urethane chemical modification and will affect the actual joint strength. The roof joint is composed of urethane glue and this glue will be affected if the temperature is higher than 194 °F * * * If our educated estimate is that only 61 buses on (sic) the 295 buses involved in this recall are affected, however they cannot be individually identified. Also, during the test, the transverse joint succeeded at 116% of the requirement and the longitudinal joint failed only by 9% with 91% of the requirement. The objective of this recall is to increase the strength of the joint. We presently suspect that a retrofit could affect/damage the roof rather to (sic) reinforce the joint.

Corbeil states that no accidents or injuries have occurred as a result of this noncompliance.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 23, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: November 17, 2005.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. 05–23138 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–22554; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that certain tires it produced in 2005 do not comply with S4.3(d) and S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on October 3, 2005 in the **Federal Register** (70 FR 57645). NHTSA received no comments.

Michelin produced approximately 9,816 BFGoodrich Radial T/A tires during the period from February 20, 2005 through April 7, 2005 that do not comply with FMVSS No. 109, S4.3(d) and S4.3(e). S4.3 of FMVSS No. 109 requires that ''each tire shall have permanently molded into or onto both sidewalls * * * (d) The generic name of each cord material used in the plies * * * of the tire'' and ''(e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different.'' The noncompliant tires were marked ''tread plies 2 polyester + 2 steel; sidewall plies 2 polyester + 1 nylon.'' The correct marking should read ''tread plies 2 polyester + 2 steel + 1 nylon; sidewall plies 2 polyester.''

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin stated that NHTSA has consistently found that ply labeling noncompliances are inconsequential to motor vehicle safety and has consistently granted inconsequential noncompliance petitions on that basis. Michelin also stated that all load and inflation pressure markings are present and the noncompliant tires meet or exceed all of the FMVSS No. 109 minimum performance requirements.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Michelin's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109 and all other informational markings as required by FMVSS No. 109 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: November 17, 2005.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. 05–23137 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22971; Notice 1]

Weekend Warrior Trailers, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Weekend Warrior Trailers, Inc. (Weekend Warrior) has determined that certain ramp-equipped travel trailers that it produced in 2001 through 2005 do not comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Weekend Warrior has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Weekend Warrior has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Weekend Warrior's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 13,447 ramp-equipped travel trailers produced between January 2001 and September 2005. FMVSS No. 108 requires that these vehicles be equipped with amber intermediate side marker lamps and reflex reflectors, and red identification lamps. However, the subject vehicles are not equipped with these devices.

Weekend Warrior believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Weekend Warrior states that the noncompliance has caused no safety related accidents or injuries, and that it has received no customer complaints or notification of injuries or deaths related to the absence of the required items.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 0590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

Comment closing date: December 23, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: November 17, 2005.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. 05–23136 Filed 11–22–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 23, 2005.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 17, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Special Permits & Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14266–N		NCF Industries, Inc.	49 CFR 173.302a, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification fiber reinforced hoop wrapped cylinders with water capacities with water capacities of up to 120 cubic feet for use in transporting certain Class 2 gases. (modes 1, 2, 3, 4, 5)
14267–N		Department of Energy.	49 CFR 173.417(a)(1) ..	To authorize the transportation in commerce of waste fissile uranium contaminated equipment in DOT 7A, Type A packaging when transported by motor vehicle or rail. (modes 1, 2)
14269–N		Texmark Chemicals, Inc. Galena Park, TX.	49 CFR 177.834(i); and 174.67(j).	To authorize alternative attendance requirements for loading and unloading Class 3 flammable liquids transported by motor vehicle and rail in cargo tanks, portable tanks and rail cars. (modes 1, 2)
14270–N		Piper Metal Forming Corporation New Albany, MS.	49 CFR 173.302a, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders conforming to all regulations applicable to a DOT specification 3AL cylinder except that the material of construction is aluminum alloy 6969. (modes 1, 2, 3, 4, 5)
14271–N		Florida Power and Light Co. Jensen Beach, FL.	49 CFR 173.403, 173.427(b), 173.465(c) and (d).	To authorize the transportation in commerce of a Class 7 nuclear reactor head in alternative packaging. (modes 1, 3)
14272–N		Arrow Tank and Engineering Co. Minneapolis, MN.	49 CFR 173.5a	To authorize the transportation in commerce of a non-specification cargo tank (volumetric meter prover) containing the residue of a Division 2.1 material. (mode 1)
14273–N		Garden State Tobacco d/b/a H.J. Bailey Co. Neptune, NJ.	49 CFR 172.102 Special provision N10; 173.308.	To authorize the transportation in commerce of lighters in non-DOT specification packaging without marking the approval number (T number) on the outer package. (mode 1)
14274–N		Horiba Instruments, Inc. Irvine, CA.	49 CFR 177.834(h)	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (mode 1)
14275–N		Hawk FRP, LLC Ardmore, OK.	49 CFR 178.345	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tanks construct of fiberglass reinforced plastic for use in transporting various hazardous materials. (mode 1)
14276–N		Environmental Packaging Technologies Atkinson, NH.	49 CFR 173.12(b)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications. (mode 1)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14277–N	.....	Ascus Technologies, Ltd.	49 CFR 172.102(c)(3) Special provision B32 and 173.242.	To authorize the manufacture, marking, sale and use of non-DOT specification multi-wall carbon/epoxy composite cargo tank motor vehicle. (mode 1)
14279–N	PHMSA–23028	Airgas, Inc. Cheyenne, WY.	49 CFR 173.40; 173.304.	To authorize the transportation in commerce of hydrogen sulfide in DOT specification cylinders with a service pressure of 480 psig. (modes 1, 3)
14280–N	PHMSA–23029	Albemarle Corporation.	49 CFR 173.226(a)	To authorize the one-time transportation in commerce of bromine in DOT-specification 4BW cylinders by motor vehicle. (mode 1)
14281–N	PHMSA–23027	Inflation Systems, Inc. Moses Lake, WA.	49 CFR173.56(b), 173.61(a).	To authorize the transportation in commerce of certain scrap airbag inflators, seat belt pretensioners and/or airbag modules classified as Division 1.3C explosive articles.

[FR Doc. 05–23169 Filed 11–22–05; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before December 8, 2005.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 17, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Special Permits & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
5206–M	.....	Nelson Brothers, LLC Birmingham, AL.	49 CFR 173.3(a); 173.3(b); 173.24(c); 173.60.	5206	To modify the special permit to authorize the transportation of an additional Division 1.5D material in privately operated bulk hopper-type motor vehicles.
7887–M	.....	Estes-Cox Corporation, d/b/a Estes Industries Penrose, CO.	49 CFR 172.101; 175.3.	7887	To modify the special permit to allow igniters, Division 1.4S, to be shipped in the same inner and outer packaging as model rocket motors and with nonhazardous materials needed to construct model rockets.
10407–M	.....	Thermo Measure Tech Sugar Land, TX.	49 CFR 173.302a(a); 175.3.	10407	To modify the special permit to authorize the use of an alternative radiation detector or ionization chamber for the transportation of Division 2.2 materials.
10878–M	.....	Tankcon FRP, Inc. Boisbriand, OC.	49 CFR 172.102(c)(3); 173.242.	10878	To modify the special permit to waive the requirements for shipping papers to bear the DOT–SP number when transporting Class 8 materials in FRP cargo tanks.

MODIFICATION EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
11646–M	.....	Barton Solvents, Inc. Des Moines, IA.	49 CFR 172.203(a); 172.301(c); 177.834(h).	11646	To modify the special permit to authorize the discharge of a Class 8 and an additional Class 3 material from a DOT Specification drum without removing the drum from the vehicle.
12561–M	RSPA–00–8305	Rhodia Inc. Cranbury, NJ.	49 CFR 172.203(a); 173.31; 179.13.	12561	To modify the special permit to authorize the use of 60 additional DOT Specification tank cars for the transportation of Class 8 materials.
13182–M	RSPA–02–14023	Cytec Industries Inc. West Paterson, NJ.	49 CFR 173.192(a); 173.304a(b).	13182	To modify the special permit to authorize the maximum fill density to 45% for the DOT Specification and non-DOT specification cyliners transporting a Division 2.3 material.
13245–M	RSPA–03–15985	Piper Metal Forming Corporation New Albany, MS.	49 CFR 173.302(a)(1); 175.3.	13245	To modify the special permit to authorize a new neck configuration design for the non-refillable, non-DOT specification cylinders transporting Division 2.2 materials.
13481–M	.....	Onyx Environmental Services, L.L.C. Ledgewood, NJ.	49 CFR 172.320; 173.54(a), (e) and (j); 173.56(b); 173.57; 173.58; 173.60; 173.62.	13481	To modify the exemption to authorize the transportation of solid explosive substances in special shipping containers.
13583–M	RSPA–04–18507	Structural Composites Industries Pomona, CA.	49 CFR 178.35	13583	To modify the special permit to authorize an alternative test method and extend the service life of each non-DOT specification composite cylinder for up to 30 years.
13599–M	RSPA–04–18712	Air Products & Chemicals, Inc. Allentown, PA.	49 CFR 173.304a(a)(2).	13599	To modify the special permit to authorize an increase in fill densities/ratios for the DOT Specification seamless steel cylinders transporting a Division 2.2 material.
13738–M	RSPA–04–18889	Department of Energy Washington, DC.	49 CFR 173.420(a)(4).	13738	To modify the special permit to provide relief from the marking requirements for shipment of cylinders with missing or illegible nameplates containing a Class 7 material.

[FR Doc. 05–23170 Filed 11–23–05; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 9)]

Railroad Revenue Adequacy—2004 Determination

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision.

SUMMARY: On November 23, 2005, the Board served a decision announcing the 2004 revenue adequacy determinations for the Nation's Class I railroads. One carrier, Norfolk Southern Railway Company, is found to be revenue adequate.

DATES: *Effective Date:* This decision is effective November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339).

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2004, determined to be 10.1% in *Railroad Cost of Capital—2004,* STB Ex Parte No. 558 (Sub-No. 8) (STB served June 30, 2005). This revenue adequacy standard was applied to each Class I railroad, and one carrier was found to be revenue adequate for 2004.

The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202–306–4004 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339), or by e-mail at *asapdc@verizon.net.*

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: November 17, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–23259 Filed 11–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34770]

D&W Railroad, LLC—Acquisition Exemption—Rail Lines of D&W Railroad, Inc.

D&W Railroad, LLC (D&W, LLC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 29 miles of rail line, including incidental trackage rights, known as the Waterloo Industrial Lead, from D&W Railroad, Inc. The lines to be acquired are located in Black Hawk, Buchanan and Fayette Counties, IA, as follows: (1) between milepost 332.0 at Dewar, IA, and milepost 354.3 at Oelwein, IA; (2) between milepost 245.58 and milepost 245.0 at Oelwein; (3) .32 miles of wye track at Oelwein; and (4) incidental trackage rights over Union Pacific Railroad Company's track between milepost 332.0 at Dewar and milepost 326.2 at Linden Street, Waterloo, IA.[1]

D&W, LLC certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

D&W, LLC reported that the parties intend to consummate the transaction no earlier than October 31, 2005 (the effective date of the exemption).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34770, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 16, 2005.

[1] According to D&W, LLC, the lines have been operated by Iowa Northern Railway Company (Iowa Northern) and Iowa Northern will continue to operate the lines under D&W, LLC's ownership.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–23094 Filed 11–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its proposed information collection titled, ''Customer Complaint Form.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit written comments by: December 23, 2005.

ADDRESSES: You should direct your comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–NEW, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On September 7, 2005, the OCC published in the **Federal Register** (70 FR 53274) a notice concerning the renewal of this information collection. The OCC received no public comments and is now submitting its request to OMB for approval.

Title: Customer Complaint Form.

OMB Number: 1557–NEW.

Description: The customer complaint form was developed as a courtesy for those that contact the Office of the Comptroller of the Currency's Customer Assistance Group and wish to file a formal, written complaint. The form allows the consumer to focus its issues and provide a complete picture of their concerns, but is entirely voluntary. It is designed to prevent having to go back to the consumer for additional information, which delays the process. Completion of the form allows the Customer Assistance Group (CAG) to process the complaint more efficiently. The CAG will use the information to create a record of the consumer's contact, including capturing information that can be used to resolve the consumer's issues and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,149.

Total Annual Responses: 2,149.

Frequency of Response: On occasion.

Total Annual Burden Hours: 142.

All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 15, 2005.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05–23124 Filed 11–22–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development

Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Amy E. Centanni, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0255; e-mail at: *amy.centanni@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Provisional Patent Application No. 60/674,881 ''Cell-Specific Molecule and Method for Importing DNA into Osteoblast Nuclei.''

Dated: November 16, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. 05–23210 Filed 11–22–05; 8:45am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on December 12–13, 2005 in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The sessions will convene at 8 a.m. and adjourn at 5 p.m. Sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on scientific research on Gulf War illnesses published since the last committee meeting. Additionally, there will be preliminary information on treatment research for Gulf War illnesses, research related to possible health effects of exposures during the 1991 Gulf War, and discussion of committee business and activities.

Members of the public may submit written statements for the Committee's review to Dr. William J. Goldberg, Designated Federal Officer, Department of Veterans Affairs (121E), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Dr. William J. Goldberg at (202) 254–0294.

Dated: November 17, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–23207 Filed 11–22–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting for December 9, 2005, in Conference Room 542, Department of Veterans Affairs, Veterans Benefits Administration, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under Chapters 30, 32, 34, or 35 of title 38, United States Code.

The meeting will begin with opening remarks by Ms. Sandra Winborne, Committee Chair. During the morning session, there will be a presentation on the usage of the license and certification test reimbursement benefit, and discussions about system updates and outreach activities. The afternoon session will include any statements from the public (scheduled for 1:30 p.m.) old business, and any new business.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Ms. Stacey St. Holder, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Anyone wishing to attend the meeting should contact Ms. Stacey St. Holder or Mr. Michael Yunker at (202) 273–7187.

Dated: November 17, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–23209 Filed 11–22–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
November 23, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 91, et al.

Reduction of Fuel Tank Flammability in Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 91, 121, 125, and 129

[Docket No. FAA–2005–22997; Notice No. 05–14]

RIN 2120–A123

Reduction of Fuel Tank Flammability in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes new rules that will require operators and manufacturers of transport-category airplanes to take steps that, in combination with other required actions, should greatly reduce the chances of a catastrophic fuel-tank explosion. The proposal follows seven years of intensive research by the FAA in collaboration with industry into promising technologies designed to make fuel tanks effectively inert, thus preventing electrical and other systems from igniting flammable vapors in the fuel tank ullage (vapor space). The result of that research is that fuel tank inerting, originally thought to be prohibitively expensive, can now be accomplished in a reasonably cost-effective fashion and protect the public from future calamities which, we have concluded, are otherwise virtually certain to occur. The new rules, if adopted, would not actually direct the adoption of specific inerting technology either by manufacturers or operators but would establish a performance-based set of requirements that do not specifically direct the use of fuel-inerting but rather set acceptable levels of flammability exposure in tanks most prone to explosion or require the installation of an ignition mitigation means in an affected fuel tank. Technology now provides a variety of commercially feasible methods to accomplish these vital safety objectives.

DATES: Send your comments on or before March 23, 2006.

ADDRESSES: You may send comments, identified by Docket No. FAA–2005–22997, using any of the following methods:

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 20590–001.

Fax: 1–202–493–2251.

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section. Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.* Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Table of Contents

I. Executive Summary
II. Background
  A. The Need for Safety Improvements in Fuel Tank Systems
  B. Fuel Properties
  C. National Transportation Safety Board (NTSB) Recommendations
  D. FAA Response
III. Proposed Requirements Relating to Fuel Tank Flammability

A. Overview of the Proposal
B. Ongoing Responsibility of Type Certificate Holders for Continued Airworthiness
C. Applicability
1. Manufacturers and Holders of Type Certificates, Supplemental Type Certificates and Field Approvals
2. Airplanes
3. Fuel Tanks
4. Airplane Operators
D. Proposed Requirements for Manufacturers and Holders of Type Certificates, Supplemental Type Certificates and Field Approvals
1. New Airplane Designs
2. Existing Airplane Designs
3. Auxiliary Fuel Tanks
4. Methods of Mitigating the Likelihood of a Fuel Tank Explosion
a. Flammability Analysis Using the Monte Carlo Method
b. Ignition Mitigation Means
c. Flammability Reduction Means
i. Accounting for System Reliability and Performance Issues
ii. Warm Day Fleet Flammability Exposure
iii. Reliability Reporting
iv. Reliability Indication and Maintenance Access
d. Service Instructions and Service Bulletins
e. Critical Design Configuration Control Limitations (CDCCL)
f. Compliance Planning
i. Compliance Plan for Flammability Exposure Analysis
ii. Compliance Plan for Design Changes and Service Instructions
iii. Compliance Plan for Auxiliary Fuel Tanks
g. Compliance Schedule
E. Proposed Requirements for Airplane Operators
1. Requirement to Install and Operate FRM, IMM or FIMM
2. Authority to Operate with an Inoperative FRM, IMM or FIMM
3. Compliance Schedule
F. Additional Provisions
1. Relationship of this Proposal to Aging Airplane Regulatory Initiatives
2. FAA Advisory Material
3. FAA Oversight Office
4. Workplace Safety Issues
IV. Rulemaking Analyses and Notices
V. The Proposed Amendment

I. Executive Summary

Fuel tank explosions have been a constant threat with serious aviation safety implications for many years. Since 1960, some 17 airplanes have been destroyed as the result of a fuel tank explosion.[1] Four fatal airplane accidents have been caused by fuel tank explosions just since 1989. Two of the more recent accidents—one involving a Boeing Model 747 (TWA Flight 800) off Long Island, New York in 1996 and the other, a Boeing Model 727 accident (Avianca Flight 203) in Bogotá, Columbia in 1989—occurred during flight and led to catastrophic losses, including the deaths of 337 individuals. The two other recent explosions occurred on the ground but led to nine fatalities.[2] Although it was determined that a terrorist's bomb had caused the explosion of the center tank in the Bogotá accident, the NTSB determined the ''bomb explosion did not compromise the structural integrity of the airplane; however, the explosion punctured the [center wing tank] and ignited the fuel-air vapors in the ullage, resulting in destruction of the airplane.'' Investigations of the other three accidents failed to identify the ignition source that caused the explosion. But in each instance the weather was warm, with an outside air temperature over 80 °F, the incident occurred during the initial (ground, takeoff or climb) phases of flight, and the explosion involved empty or nearly empty tanks that had been previously fueled. Additionally, investigators were able to conclude that the center wing fuel tank in all four airplanes contained flammable vapors in the ullage (that portion of the fuel tank not occupied by liquid fuel) when the fuel tanks exploded. While the proposed requirements are not intended to address terrorist initiated fuel tank explosions, a system designed to reduce the likelihood of a fuel tank fire, or mitigate the effects of a fire should one occur, would have prevented these four fuel tank explosions.

A statistical evaluation of these accidents has led the FAA to project that nine more transport category airplanes will likely be destroyed by a fuel tank explosion in the next 50 years, unless remedial measures are taken. Although we cannot forecast precisely when these accidents would occur, computer modeling that has been an accurate predictor in the past indicates these events are virtually certain to occur. We believe at least eight of these explosions are preventable if we adopt a comprehensive safety regime to reduce both the incidence of ignition and the likelihood of an explosion following ignition. We have already taken steps through other regulatory actions to reduce the chances of ignition. Today's proposal attempts to address the risk of an explosion by reducing the likelihood that fuel tank vapors cause an explosion when an ignition source is introduced into the tank.

Since the introduction of turbine powered airplanes, the FAA has premised its fuel tank rules on the assumption that fuel tanks will always contain flammable vapors and thus the best way to prevent explosions is to eliminate ignition sources. Since 2001, we have imposed airworthiness requirements (including airworthiness directives or ''ADs'') directed at the elimination of fuel tank ignition sources. Although these measures—particularly Special Federal Aviation Regulation 88 of 14 CFR part 21 (SFAR 88), which requires the detection and correction of potential system failures that can cause ignition—should prevent some of the nine forecast explosions, review of the current designs of airplanes in the transport category of all major manufacturers has shown that unanticipated failures and maintenance errors will continue to generate unexpected ignition sources. We have concluded we are unlikely ever to identify and eradicate all possible sources of ignition.

To ensure safety, therefore, we must also focus on the environment that permits combustion to occur in the first place. Technology now exists that can prevent ignition of flammable fuel vapors by reducing their oxygen concentration below the level that will support combustion. By thus making the vapors ''inert,'' we can significantly reduce the likelihood of an explosion when a fire source is introduced to the fuel tank. Prototype onboard fuel tank inerting systems have been successfully flight tested on Airbus A320, Boeing Model 747, and Model 737 airplanes. Boeing applied in 2002 for type certification of an inerting system for the Model 747 that it plans to install on all new production 747 aircraft.

Because the chances of a fuel tank explosion naturally correlate with the exposure of the tank to flammable vapors, the proposed requirements would mitigate the effects of such exposure or limit such exposure to acceptable levels by mandating the installation of either a Flammability Reduction Means (FRM) or an Ignition Mitigation Means (IMM). In either case, the technology would have to adhere to performance and reliability standards that would be set by the FAA and contained in Appendices K and L to Title 14 Code of Federal Regulations (CFR) part 25.

If adopted, this rulemaking would amend the existing airworthiness

[1] None of the 17 explosions occurred on an airplane manufactured by Airbus, who, along with Boeing, would be most affected by this rulemaking. Although Airbus currently delivers more airplanes worldwide than Boeing, their cumulative fleet hours are still relatively small, at approximately 65 million (approximately 9% of total fleet hours for all transport category airplanes). Based on the FAA's projection of the likelihood of an explosion based on one accident every 60 million hours, there is a 40% chance that no Airbus accidents would have occurred to date.

[2] Philippine Airlines 737 accident in 1990 and the Thai Airlines accident in 2001.

standards contained in 14 CFR 25.981 so as to require all type certificate (TC) holders and their licensees to develop FRM or IMM for many large turbine powered transport category airplanes with high risk fuel tanks. We would also amend 14 CFR parts 91, 121, 125 and 129 so as to require operators of these airplanes to incorporate the approved FRM or IMM and to keep them operational. We estimate that approximately 3,800 Airbus and Boeing airplanes operated in the United States would be affected. Fuel tank system designs in several pending type-certification applications, including the Airbus A380 and the Boeing Model 7E7, would also have to meet the proposed requirements.

We acknowledge that the proposed requirements are costly and propose these steps only after spending several years, in cooperation with scientists and other experts from the affected industry, researching the most cost-effective ways to prevent fuel tank explosions. Those efforts have resulted in the development of fuel-inerting technology that is vastly cheaper than originally thought.

The loss of a single, fully loaded large passenger aircraft in flight, such as a Boeing Model 747 or Airbus A380, moreover, would result in death and destruction causing societal loss of at least $1.2 billion based on prior calamities, and we project that the new rule would prevent four accidents of some type (for analytical purposes we assume the accidents would involve ''average'' aircraft with ''average'' passenger loads) over 50 years. Such estimates of harm do not account for the intangible costs of a series of in-flight explosions (such as a loss of confidence in aviation) or the indirect costs (such as trip cancellations following these incidents).

Our philosophy is to address aviation safety threats whenever practicable solutions are found, especially when dealing with intractable and catastrophic risks like fuel tank explosions that are virtually certain to occur. Thus, now that solutions are reasonably cost-effective, the Administrator has tentatively determined that it is necessary for safety and in the public's best interest to adopt the requirements proposed today. This action is in response to an NTSB recommendation.

II. Background

A. The Need for Safety Improvements in Fuel Tank Systems

Fuel tank explosions continue to occur despite many safety improvements over the last 40 years aimed at removing ignition sources from fuel tanks. Experience tells us that even with the latest and most comprehensive initiative, SFAR 88, we cannot adequately protect the public from fuel tank explosions absent measures designed to lessen the exposure of vulnerable tanks to highly flammable jet fuel vapors. Fortunately, by taking such steps now to complement ignition-source reduction measures already taken, we are confident that fuel tank explosions in affected aircraft will be nearly eliminated.

For a variety of reasons, SFAR 88, though a significant advancement in safety, will never provide a complete safeguard against fuel tank explosions; thus our analysis has assumed that SFAR 88 will not reduce the possibility of a fuel explosion occurring by more than 50 percent. To be sure, SFAR 88 has resulted in several significant changes in fuel tank system design and maintenance, including (1) new features to prevent dry running of fuel pumps within the fuel tanks; (2) use of ground fault protection of fuel pump power supplies for pumps or wires exposed to the fuel tank ullage; (3) addition of electrical bonds on some components; (4) use of electrical energy limiters on wiring entering fuel tanks that are ''normally emptied'' [3] and located within the fuselage contour; (5) electrical bond integrity checks; and (6) improved maintenance programs. These design improvements, however, do not and cannot address all sources of ignition (such as external ignition sources resulting from fire).

Past experience, moreover, shows that it is not possible to pinpoint and remove every ignition source from a large, complex transport aircraft. For example, the FAA is aware of one case where a manufacturer had conducted an exhaustive design review to identify possible sources of arcing within the fuel tank after a fuel tank exploded due to lightning. The manufacturer identified several possible sources of the arcing, and the FAA issued ADs to correct these deficiencies. The same airplane design was then evaluated as a result of SFAR 88, and additional sources of lightning-induced ignition were identified. In another instance, a TC holder submitted a safety analysis to the FAA claiming that certain airplane models met existing system safety requirements of § 25.1309 and thus that the likelihood of an ignition source developing was extremely improbable (one in a billion flight hours). When the requirements of the SFAR 88 safety review and unsafe condition criteria were applied, however, approximately 80 new unsafe conditions were found. These conditions will now be addressed by AD for those airplane models but, in retrospect, it was clear that the manufacturer's claims were erroneous.

The safety reviews have also identified the potential for system failures (or ''failure modes'') that cannot be eliminated as possible ignition sources at reasonable cost. For example, use of ground fault protection for fuel pump power supplies will protect the fuel pumps from shorts to ground (such as one might find from lightning), but will not protect the fuel pumps from shorts between the three power wires to the pump, commonly referred to as ''phase-to-phase shorts.'' Currently there is no proven component available to address this failure mode. Combinations of failure modes are even more problematic. We could require installation of redundant bond paths to prevent the latent failure of a critical electrical bond, but doing so would be cost-prohibitive.

Finally, human error creates continuing risk. Each attempt to fix an electrical system presents the possibility of an inadvertent introduction of a new ignition source. Maintenance oversights, such as the failure to properly install electrical bonds or improper installation or overhaul of components, compound the possibility of an ignition source developing.

Carrier fuel carrying practices could impact the possibility of an explosion as well. If a carrier decides to carry only that fuel necessary to meet the FAA's fuel reserve requirements, the likelihood of an explosion is greater than if it carries excess fuel. This potential exists because more ignition sources within the fuel tank are exposed to the ullage and because the fuel has insulating properties which keeps the fuel tank cooler. Thus, ''tankering'', or carrying excess fuel, could theoretically lower the risk of an explosion. Current fuel management practices, where excess fuel is carried only when cost beneficial to the carrier, are largely market driven because airlines try to minimize their fuel costs to the maximum extent possible. Both the FAA and industry explored mandatory refueling of center wing tanks after the NTSB suggested the FAA adopt an interim flammability reduction measure in 1996. We determined that the reduction in

[3] The phrase ''normally emptied'' refers to fuel tanks that contain a substantial vapor space during a significant portion of the airplane operating time. Tanks that are designed to be normally emptied have been installed in various locations including the center wing structure, horizontal stabilizers, wings and cargo compartments. Fuel loading and usage management practices on certain airplane models use the auxiliary fuel tanks for controlling the center of gravity.

flammability exposure would not be significant and would not address the warm day flammability risk. Thus, while either reducing or increasing the amount of fuel carried in the center wing tank could theoretically have some impact on the risk of an explosion, the FAA does not believe that current fuel carrying practices are likely either to change significantly or to have a measurable impact on the overall risk of an explosion. We seek comment on this position.

B. Fuel Properties

Three conditions must be present in a fuel tank to support combustion and a fuel-tank explosion: Fuel vapor in the right amount, enough oxygen, and an ignition source. As discussed earlier, our regulatory efforts since piston-powered aircraft evolved into the jet age have been focused almost exclusively on the last item, ignition sources. A basic assumption in this approach has been that the fuel tank would contain flammable vapors under a wide range of airplane operating conditions. The question is, what level of exposure is safe?

Jet fuel vapors are flammable only in certain temperature and pressure ranges. The flammability temperature range of such vapors varies with the type and properties of the fuel, the ambient pressure in the tank, and the amount of dissolved oxygen released from the fuel into the tank. The amount of dissolved oxygen in a tank will also vary depending on the amount of vibration and sloshing of the fuel that occurs within the tank. The temperature range in which a flammable fuel vapor will form can vary with different batches of fuel even for a specific fuel type, but the threshold temperature for flammability decreases as the airplane gains altitude because of the corresponding decrease of internal tank air pressure. Thus, the higher the airplane is flying, the lower the ambient temperature required for a fuel tank to explode when an ignition source introduced.

Jet A fuel is the most commonly used commercial jet fuel in the United States and is widely used in other parts of the world. At sea level and with no sloshing or vibration present, these fuels have flammability characteristics that make it unlikely that the fuel molecules present in the fuel vapor-air mixture will ignite when the temperature in the fuel tank is below approximately 100 °F. The vapor will ignite, however, once the fuel temperature reaches approximately 175 °F, because of the increased concentration of fuel molecules at higher temperatures. At an altitude of 30,000 feet, the flammability temperature range drops to approximately 60 to 120 °F.[4] Use of Jet A or Jet A–1 fuel thus tends to limit the risk of high flammability to warmer days.

Jet B (JP–4) is another fuel approved for use on most commercial transport category airplanes, although it is no longer used as a primary fuel for commercial transports. The flammability range of Jet B (JP–4) is about 15 to 75 °F at sea level and 20 to 35 °F at 30,000 feet. Because the flammable temperature range of Jet B fuel is more within the range of typical air temperatures at those altitudes where the airplane is likely to be operated, airplane fuel tanks with Jet B fuel are flammable for a much larger portion of the flight.

C. National Transportation Safety Board (NTSB) Recommendations

The NTSB determined that the probable cause of the in-flight explosion on TWA Flight 800 was the ignition of the flammable fuel/air mixture in the center wing fuel tank. However, the source of ignition energy for the explosion could not be determined with certainty. The Board also faulted, as contributing to the accident, the FAA's design and certification approach to transport-category airplanes, as it (1) concentrated solely on precluding all ignition sources, and (2) allowed heat sources to be located beneath the center wing fuel tank.

In 1996, the NTSB issued recommendations to improve fuel tank safety. The NTSB recommended both eradicating ignition sources and reducing fuel tank flammability.[5] In their accident report, the Board concluded that ''a fuel tank design and certification philosophy that relies solely on the elimination of all ignition sources, while accepting the existence of fuel tank flammability, is fundamentally flawed because experience has demonstrated that all possible ignition sources cannot be determined and reliably eliminated.''

D. FAA Response

The FAA conducted ignition-prevention safety reviews following the 1996 accident, which revealed many new single-component failure modes that could ignite fuel tanks. We continue to issue ADs that require design or maintenance actions to address these deficiencies. These safety reviews also identified combinations of failures that could result in an ignition source, but as these combinations were less likely to occur than single failures, we determined that it was not practical to address them in existing airplanes. The safety reviews also confirmed that unforeseen design and maintenance errors could create ignition sources.

Recognizing the need to focus on flammability rather than just ignition, on April 3, 1997, the FAA published a notice in the **Federal Register** seeking comments on the 1996 NTSB recommendations on flammability exposure (62 FR 16014). That notice reviewed the service history of transport category airplane fuel tanks and the challenges underlying fuel-tank flammability reduction. Public comment indicated that more information was needed before we could begin a rulemaking on this safety issue.

Given that control of flammable vapors was a new concept, we assigned two Aviation Rulemaking Advisory Committee (ARAC) working groups to study the issues and provide recommendations. (The ARAC consists of interested parties, including the public, and provides a process to advise us on the development of new regulations.) The first working group reviewed the practicality of requiring flammability reduction, evaluating many different flammability reduction methods. Upon the recommendation of the first working group, the second working group then focused exclusively on fuel tank inerting.

On January 23, 1998, we published a notice in the **Federal Register** that established the Fuel Tank Harmonization Working Group as part of ARAC (63 FR 3614). This group was asked to recommend regulations on fuel tank flammability for both newly certificated and existing airplanes. The working group looked at fuel tank explosions that occurred after Jet A fuel had replaced Jet B fuel as the predominant type used on transport airplanes. The group examined the performance of two types of fuel tanks: the center wing fuel tanks located within the fuselage contour, and wing fuel tanks. Fuel tanks located in an aluminum wing are typically unheated and cool quickly when the wing surfaces are exposed to colder air during flight. Conversely, the center wing fuel tanks in certain airplanes have equipment underneath the tank radiating heat; in addition, with no surfaces exposed to outside air, the tank

[4] Most transport category airplanes used in air carrier service are approved for operation at altitudes from sea level to 45,000 feet.

[5] NTSB recommendations provided on page 309 of NTSB Accident Report, ''In-flight Breakup Over the Atlantic Ocean, TransWorld Airlines Flight 800 Boeing 747–131, N93119 Near East Moriches, New York, July 17, 1996, Report number NTSB/AAR–00/03, DCA96MA070, Adopted August 23, 2000.

cools much more slowly than a wing fuel tank.

The working group concluded that the safety records of fuel tanks located in aluminum wings of airplanes fueled with Jet A type fuel were satisfactory. These tanks had an average flammability exposure (as calculated under a methodology contained in proposed Part 25, Appendix L) of approximately 2 to 6 percent. However, the group found that on some airplane fleets the center wing fuel tanks had an average flammability exposure ranging from 7 percent to a high of 30 percent, a dangerous level.

The working group then evaluated many possible means of reducing or removing the hazards associated with explosive vapors in fuel tanks, such as fuel tank inerting, fuel tank cooling, fuel property alteration, fire suppression systems and polyurethane foam treatments. The ARAC sent the working group's report to the FAA on July 23, 1998 (Docket No. FAA–1998–4183, viewable on the U.S. Department of Transportation electronic Document Management System at *http://dms.dot.gov*).

The working group report concluded that flammability reduction was practical for new airplane designs, but impractical for current production designs or retrofit in the current fleet of transport category airplanes. The report recommended that the FAA begin rulemaking to add a requirement to § 25.981, so that fuel tanks in new airplane designs would have an average flammability exposure of less than 7 percent. The report also recommended requiring by regulation that each newly designed airplane incorporate means to mitigate the effects of an ignition of fuel vapors, such that any damage caused would not prevent continued safe flight and landing. The report reviewed various technical solutions, including control of heat transmission into fuel tanks, use of inerting systems, or ignition mitigation means like polyurethane foam. The report concluded that the best solution was likely to be control of heat transmission and suggested that the most practical means of control were (1) relocation of the air-conditioning equipment away from the fuel tanks; (2) ventilation of the air-conditioning bay to limit heating and cool fuel tanks; or (3) insulation of the tanks from heat. Nevertheless, the ARAC also recommended that we continue to evaluate the cost-effectiveness of other means for reducing flammable vapors in the fuel tanks, such as ground-based inerting of fuel tanks.

Based in part on the ARAC recommendations, we issued a rule entitled ''Transport Airplane Fuel Tank System Design, and Maintenance and Inspection Requirements'' in the **Federal Register** on May 7, 2001 (66 FR 23085). The rule added current § 25.981(c) which requires minimization of fuel tank flammability exposure in new type designs without setting a specific safety standard. Section 25.981(c) thus states:

> (c) The fuel tank installation must include either—
>
> (1) Means to minimize the development of flammable vapors in the fuel tanks (in the context of this rule, ''minimize'' means to incorporate practicable design methods to reduce the likelihood of flammable vapors); or
>
> (2) Means to mitigate the effects of an ignition of fuel vapors within fuel tanks such that no damage caused by an ignition will prevent continued safe flight and landing.

Higher flammability tanks are typically located in the center wing box, in the horizontal stabilizer where little surface area is exposed to outside air, or in the cargo compartment. Our intent, as discussed in that rule's preamble was to ''require that [such] fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated.'' We noted that, ''This may require incorporating design features to reduce flammability, for example cooling and ventilation means, or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.'' (Our reference to a wing tank was to a conventional subsonic airplane with aluminum wing tanks.) We also stated, ''At such time as the FAA has completed the necessary research and identified an appropriate definitive standard to address this issue, new rulemaking would be considered to revise the standard proposed in this rulemaking.''

We then issued two Advisory Circulars, AC 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' and AC 25.981–2, ''Fuel Tank Flammability Minimization.'' These ACs described acceptable means of showing compliance with § 25.981(c). AC 25.981–2 specifically discussed the use of fuel tank inerting as a method of compliance with the flammability exposure requirements. To ''inert'' a fuel tank, as defined in AC 25.981–2, the percentage of oxygen in a fuel tank's air should not exceed 10 percent. (Later research, discussed below, showed that containing oxygen concentrations to 12 percent or less would inert a fuel tank.)

After revising § 25.981, we began scientific research, hoping to gain a better understanding of the ignition properties of commercial aviation jet fuel vapors. We also explored new ideas for removing flammable fuel air mixtures from fuel tanks, as well as other methods for improving fuel tank safety. Initially, efforts to develop commercially viable ways to remove flammable fuel vapors from tanks failed. For example, to lower the danger of fuel tank explosions after post-crash ground fires, systems were considered that would ''scrub'' the vapor in the ullage—ventilating the tank with air so as to prevent the build-up of flammable concentrations of fuel vapor. At the time, we found these systems to be impractical because of their weight, complexity, unreliability, and undesirable secondary effects on the environment.

On the recommendation of the ARAC, we refocused our efforts on reducing fuel tank flammability through nitrogen inerting. Public comment on the 1997 notice had suggested inerting was possible through adoption of a hollow fiber membrane technology, which separates oxygen from nitrogen in the atmosphere. (Air is made up of about 78 percent nitrogen and 21 percent oxygen.) The hollow fiber membrane material uses the absorption difference between the nitrogen and oxygen molecules to separate nitrogen-enriched air from oxygen. The technology had been used for many years in non-aerospace applications, such as obtaining oxygen-enriched air for medical purposes and generating nitrogen-enriched air to preserve produce in transport. In airplane applications, nitrogen-enriched air could be produced when pressurized air is forced through a canister that contains the hollow fibers. The created nitrogen-enriched air is then directed, at appropriate concentrations, into the ullage of fuel tanks and displaces the normal fuel vapor/air mixture in the tank. Use of this technology allows nitrogen to be separated from the available pressurized air onboard the airplane, which eliminates the need to carry and store nitrogen in the airplane.

Initially, we found that airplanes in the current transport category fleet were not designed with optimized air sources for creating nitrogen-enriched air. As a result, early designs required installation of an air compressor, adding significant weight and cost. Aware of the earlier system's disadvantages, our researchers worked to address those issues. Earlier fuel tank inerting designs, primarily produced for military applications to prevent fuel tank

explosions from battle damage, assumed a fuel tank was ''inert'' with a maximum of 9 percent oxygen content in the ullage. Achieving this level of concentration was not needed for transport category airplanes, as our research determined that a maximum oxygen content of 12 percent would be sufficient to protect airplanes from less powerful ignition sources typical of airplane system failures and malfunctions at sea level. Thus, our testing excluded turbulent flow flame propagation, or external fuel tank events, such as explosives and hostile fire. (The FAA test results are available in an FAA Technical Note: ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures'' (DOT/FAA/AR–TN02/79). See: *http://www.fire.tc.faa.gov/pdf/TN02-79.pdf.*)

Terrorist initiated accidents were also excluded from consideration in the earlier ARAC reports and the possible benefits in the regulatory evaluation within this notice. While the proposed FRM requirements are not intended to address terrorist initiated explosions, such as the Bogata 727 accident discussed earlier, inerting fuel tanks may provide other significant secondary safety benefits by addressing flammability exposure. Testing conducted by China Lake Naval Weapons Center [6] showed that inerting a fuel tank to 12 percent oxygen offers a high degree of protection from a fuel tank explosion when 30-millimeter high explosive incendiary projectiles shot into fuel tanks. The FAA invites comments related to the potential additional security benefits that may be achieved by imposing FRM.

Based on our research, we identified a simplified inerting system that, using existing airplane pressurized air sources, could limit a fuel tank to the 12 percent oxygen content level. This concept eliminated the need for an air compressor, thus reducing the size and complexity of the system. Our research determined that the method of distributing the nitrogen-enriched air to the fuel tank could also be simplified, which further reduced the system's weight and installation cost. We now estimate that a simplified inerting system adequate to protect the center wing tank on airplanes in the existing fleet should weigh from 100 to 250 pounds and cost from $140,000 to $225,000 to procure and install in existing airplanes, depending on fuel tank capacity. (More information on the costs of these systems is provided in the Preliminary Regulatory Evaluation.)

The FAA has openly shared with industry information on the simplified inerting system design ever since it was first developed in May 2002. This design concept was adopted by Boeing when applying for a series of type certification and production approvals to incorporate a fuel inerting system using nitrogen air enrichment in all currently produced Boeing model airplanes. Thus, on November 15, 2002, Boeing applied for a change to TC No. A20WE to modify Boeing Model 747 series airplanes to incorporate the system into its center wing fuel tanks. It has since applied for similar approvals for the Boeing Model 737 series, Boeing Model 757 series, Boeing Model 767 series, and Boeing Model 777 series airplanes. We published a request for and received public comments on a Notice of Proposed Special Conditions for flammability reduction on the Boeing Model 747 on December 9, 2003 (68 FR 68563). Final Special Conditions No. 25–285–SC was issued on January 24, 2005 (70 FR 7800; February 15, 2005).

III. Proposed Requirements Relating to Fuel Tank Flammability

We are proposing today a performance-based set of requirements that do not specifically direct the use of fuel inerting, but rather set acceptable levels of flammability exposure in tanks most prone to explosion or require the installation of an ignition mitigation means in an affected fuel tank. We also by separate notice propose to revise Advisory Circular 25.981–2 so as to describe several means of compliance with these requirements, including both flammability-reduction means, such as cooling, inerting using nitrogen or carbon dioxide, and ignition-mitigation means, such as use of polyurethane foam or explosion suppression systems. The revised AC sets out detailed parameters for such systems if used as a means of achieving the targeted safety standards.

The rule, if adopted, would require a retrofit of much of the existing fleet of large airplanes but would not necessarily affect all transport aircraft. We will require retrofit based on safety needs, using a fleet average flammability exposure limit of seven (7) percent, the level recommended by ARAC. We know that this level is routinely exceeded in tanks that are incidentally heated by nearby air conditioning equipment and in unpressurized auxiliary fuel tanks that are located in the cargo compartment and that do not significantly cool. The vast majority of large transport category airplanes operating in the U.S., including all Airbus models and most Boeing models, have center wing tanks that are above this level. We estimate that 3,800 airplanes with flammability exposure level above 7 percent would be retrofitted if this rule is adopted.

As is the case for new production airplanes, all airplanes currently equipped with a normally emptied or auxiliary fuel tanks that have a flammability level above 7 percent could not have center wing tanks that are flammable more than 3 percent on average and 3 percent on hot days. Lowering the flammability levels of these fuel tanks in the existing fleet and limiting the permissible level of flammability on new production airplanes would result in an overall reduction in the flammability potential of these airplanes of approximately 95 percent.

Some airplane models have center tanks with a fleet average flammability exposure level that does not exceed 7 percent, including to the best of our information the Lockheed L–1011, and Boeing MD–11, DC10, MD80, and Boeing Model 727, and Fokker F28 MK100. At this time we do not believe that these airplanes would need FRM or IMM for their center tanks, unless the certificate holder has also installed an auxiliary fuel tank that is found to be affected.[7]

A. Overview of the Proposal

Our proposal would require manufacturers and operators of most large transport category airplanes to reduce the average flammability exposure in affected fleets to tolerable levels of risk. Fleet average flammability exposure represents the percent of flight time that fuel vapors in the ullage are flammable, calculated across a fleet of an airplane type operating over the range of actual or expected flights and based on a wide range of environmental conditions and fuel properties.[8] This

[6] The Effectiveness of Ullage Nitrogen-Inerting Systems Against 30-mm High-Explosive Incendiary Projectiles, China Lake Naval Weapons Center, J. Hardy Tyson and John F Barnes, May 1991.

[7] Auxiliary fuel tanks are installed subject to amended supplemental type certificates or field approvals. As such they are ''aftermarket'' installations not contemplated by the original manufacturer of the airplane. Auxiliary fuel tanks are installed to permit airplanes to fly for longer periods of time by increasing the amount of available fuel. While all auxiliary fuel tanks are normally emptied, some ''normally emptied'' tanks are included in the original type design, such as the center wing tank on the Boeing 747.

[8] The airplane flammability exposure evaluation time begins when the airplane is prepared for flight (which commences upon the start of preparing the airplane for flight by turning on the auxiliary power unit/ground power, starting the environmental control systems, or taking other steps that begin the

Continued

rulemaking is premised on our finding that fuel tanks whose fleet-wide average flammability exposure is more than 7 percent have a ''high flammability exposure,'' which we consider unduly dangerous. This finding, in turn, is based on the reports and findings of the ARAC and our own risk assessment of the current transport category airplane fleet.

Our proposal would modify current regulations in several important respects, affecting both manufacturers (TC holders and STC holders) and operators (air carriers). We would significantly expand the coverage of part 25 by making manufacturers generally responsible for the development of service information and safety improvements (including design changes) where needed to ensure the continued airworthiness of previously certificated airplanes. This proposal would apply to holders of existing TCs, holders of STCs, applicants for changes to existing TCs, and certain other airplane manufacturers. We are proposing to specify the new requirements for these entities in a new subpart I to part 25, although we may decide to relocate these requirements at the time the final rule is issued to simplify harmonization efforts.

As to fuel tank flammability specifically, manufacturers, including holders of listed airplane TCs and of auxiliary fuel tank STCs, would be required to conduct a flammability exposure analysis of their fuel tanks, unless they have already notified the FAA that they will utilize an ignition mitigation means instead. A new Appendix L to part 25 will regulate the conduct of these analyses.[9] As discussed later in this document, the Appendix contains the method for calculating overall and warm day fuel tank flammability exposure values needed to show that the affected aircraft tanks comply with proposed limitations on flammability exposure levels, described below.

Where the required analyses indicate that the fuel tank has an average flammability exposure level below 7 percent, no changes would be required. However, for the other fuel tanks, manufacturers would be required to develop design modifications to support a retrofit of the airplane. Under today's proposal, the average flammability exposure level of any affected wing tank would have to be reduced to no more than 7 percent. In addition, for any normally emptied fuel tank (including auxiliary fuel tanks) located in whole or in part in the fuselage, flammability exposure would have to be reduced to 3 percent, both for the overall fleet average and for operations on warm days.

For long-pending certification projects that have not received a type certificate from the FAA prior to the date of the final rule (where application was received by the FAA before June 6, 2001, the effective date of 14 CFR 25.981(c), applicants would be required to limit the flammability exposure of any wing tank to no more than 7 percent. Any of those applicants whose proposals include any normally emptied or auxiliary fuel tank with a flammability exposure level that exceeds 7 percent would also have to meet the same flammability exposure requirements proposed for retrofit (i.e., 3 percent), if any portion of the tank is located within the fuselage contour. Applicants for more recent certification projects (where application was received after June 6, 2001), and all applicants for a TC or STC submitted after the effective date of the final rule would need to meet the new requirements of that section set forth in today's proposal.

We would set more stringent safety levels for certain critically located fuel tanks in most new type designs, while maintaining the current, general standard under § 25.981 for all other fuel tanks. We expect that as a result of this rule the design of most normally emptied and auxiliary tanks located, in whole or in part, in the fuselage of transport-category airplanes would need to incorporate some form of FRM or IMM. Regulations in a new proposed Appendix K to Part 25 contain detailed specifications for all FRM, if they are used to meet the flammability exposure limitations. These additional requirements are designed to ensure the reliability of flammability-reduction means, reporting of performance metrics and warnings of possible hazards in and around fuel tanks. Specifications for IMM are detailed in the current AC–25.981–2 and are not generally discussed in this document.

Type certificate holders for specific airplane models with high flammability exposure fuel tanks would be required to develop design changes and service instructions to facilitate the adoption of IMM or FRM. Manufacturers of these airplanes would have to incorporate these design changes in airplanes produced in the future. In addition, these sections would require design approval holders (TC and STC holders) and applicants to develop airworthiness limitations to ensure that maintenance actions and future modifications do not increase flammability exposure above the limits in this proposal. These design approval holders would have to submit binding certification plans by a specified date, and these plans would be closely monitored by the holders' FAA oversight offices to ensure timely progress.

Lastly, the proposal requires affected operators to incorporate FRM or IMM where required for high-risk fuel tanks in their existing fleet of affected airplane models. Air carriers would also have to revise their maintenance and inspection programs to incorporate the airworthiness limitations developed under the other proposals. We also intend to establish strict retrofit deadlines, which are premised on prompt compliance by manufacturers with their certification plans.

Table 1 summarizes the proposed regulatory changes that relate to fuel tank flammability safety. This table does not summarize the proposed regulatory changes that are common between this proposal and other aging airplane initiatives. Those changes are discussed in detail later.

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initial preparation of the airplane), continues through the actual flight and landing, and ends when all payload has been unloaded and all passengers and crew have disembarked.

[9] Rather than relying on the analysis already conducted pursuant to SFAR 88 and then simply regulating those airplanes with a demonstrated exposure level of 7 percent or greater, today's proposal contemplates requiring a new exposure analysis. The existing analyses, while helpful in positing which airplanes are likely to be affected by a final rule, were derived from incomplete, and sometimes differing, assumptions. Appendix L would correct such inconsistencies by establishing a single methodology for calculating average flammability exposure.

TABLE 1.—SUMMARY OF PROPOSED RULES

14 CFR	Description of proposal	Applies to
25.1, 25.2	Expand applicability to current holders of TCs, STCs, and certain manufacturers. Amend § 25.2 to make reference to the proposed subpart I.	Applicants for TCs, and changes to those TCs for transport category airplanes. Manufacturers of certain airplane models.
25.981	Revise paragraph (b) to specify limits on fuel tank flammability. Add paragraph (c) to restate current option of providing ignition mitigation means (IMM). Add paragraph (d) to include airworthiness limitation items (ALI) for IMM or Flammability Reduction Means (FRM), and move the existing ignition prevention ALI requirements into this paragraph.	Applicants for future TCs and design changes to those certificates.
Subpart I 25.1801	Defines the intent of the subpart	TCs, and design changes to those TCs for transport category airplanes. Manufacturers of certain airplane models.
25.1815	Require flammability exposure analysis of all fuel tanks within 150 days after effective date. If below 7 percent no flammability reduction required. Compliance with § 25.981(d) to define ALI required.	TC holders.
	If above 7 percent and in fuselage and normally emptied, must develop service instructions to meet § 25.981(b), (c) and (d). If above 7 percent and other tank type, must develop service instructions to incorporate IMM (meet § 25.981(c), or reduce flammability to 7 percent). Specific compliance dates for each Boeing and Airbus airplane model. Other models within 24 months.	Large transport category passenger airplanes, with passenger capacity of 30 or more or a payload of 7500 lbs or more (original TC or later increase).
25.1817	Require flammability exposure analysis of all fuel tanks installed under STC within 12 months after effective date. Require impact assessment of fuel tanks installed by STCs, and (for pending and future applicants) other STCs affecting fuel tank flammability, on IMM or FRM developed by TC holder under § 25.1815 to determine if any ALI has been violated 6 months after FAA approval of ALI submitted by TC holders under § 25.1815 or before certification, whichever is later.	Auxiliary tank STC holders for large transport category passenger airplanes, with passenger capacity of 30 or more or a payload of 7500 lbs. or more (original TC or later increase).
	Require development of service instructions to correct designs that compromise ALI defined by TC holder under § 25.1815 within 24 months. Require within 24 months after TC holder compliance with 25.1815 development of service instructions for a IMM or FRM for any tank with flammability above 7 percent, if located within the fuselage and normally emptied.	Applicants for future STCs or amendments to TCs that affect fuel tank system or IMM/FRM.
25.1819	Requires IMM or FRM for any fuel tank on a passenger airplane with a flammability level that exceeds 7 percent. Fuel tanks located in the fuselage and normally emptied must meet § 25.981(b) level. Other fuel tanks must not exceed 7 percent.	Pending certification projects. Pre Amendment 102.
	Requires compliance with § 25.981(c)	Post Amendment 102.
25.1821	Requires any affected airplanes produced after a certain date to incorporate IMM or FRM.	Manufacturers of certain airplane models.
Appendix 25 K	Establishes performance, reliability and reporting requirements for flammability reduction means.	Applicants for approval of flammability reduction means.
Appendix 25 L	Defines flammability analysis method and input parameters that must be used in the analysis.	Any person required to perform flammability analysis.
91.1509, 121.917, 125.509, 129.117.	Require retrofit of IMM or FRM into large airplanes with high flammability fuel tanks. Require large transport category airplanes manufactured after specific dates to have IMM or FRM in high flammability fuel tanks. Require incorporation of ALI into the maintenance program.	U.S. certificate holders and foreign persons operating U.S.-registered large transport category passenger airplanes.

B. Ongoing Responsibility of Type Certificate Holders for Continued Airworthiness

Several recent safety regulations necessitated action by air carriers and other operators but did not require design approval holders to develop and provide the necessary data and documents to facilitate the operators' compliance. Operators are often dependent on action by a design approval holder before they can implement new safety rules. Ongoing difficulty reported by operators in attempting to meet these rules has convinced us that the corresponding design approval holder responsibilities may be warranted under certain

circumstances to enable operators to meet regulatory deadlines.

We intend to require type-certificate holders, manufacturers and others to take actions necessary to support the continued airworthiness of and to improve the safety of transport-category airplanes. Such actions include performing assessments, developing design changes, revising instructions for continued airworthiness (ICA), and making available necessary documentation to affected persons. We believe this requirement is necessary to facilitate compliance by air carriers with operating rules that in effect demand the use of new safety features.

To address this problem, we propose to amend subpart A of part 25 to expand its coverage and to add a new subpart I to establish requirements for current holders. As discussed in our final rule, ''Fuel Tank Safety Compliance Extension and Aging Airplane Program Update'' (69 FR 45936, July 30, 2004), this and related proposals would add provisions to a new subpart I requiring actions by design approval holders that will allow operators to comply with our rules.

Part 25 currently sets airworthiness standards for the issuance of TCs, and changes to those certificates, for transport category airplanes. It does not list the specific responsibilities of manufacturers to ensure continued airworthiness of these airplanes once the certificate is issued. Therefore, we propose to revise § 25.1 by adding paragraph (c) to make clear that part 25 creates such responsibilities for holders of existing and supplemental type certificates for transport category airplanes, and applicants for approval of design changes to those certificates; we are also adding paragraph (d) to require design changes and other service activities by manufacturers when needed. In order to ensure the effectiveness of these changes, we would also amend § 25.2 (''Special retroactive requirements'') so as to require adherence to a new Subpart I which may require design changes and other activities by type certificate holders.

This proposal would establish a new subpart I, Continued Airworthiness and Safety Improvements, where we would locate rules imposing ongoing responsibilities on design approval holders. In the past, this type of requirement took the form of a Special Federal Aviation Regulations (SFAR). SFARs are difficult to locate, because they are scattered throughout Title 14. Placing all these types of requirements in a single subpart of part 25, which contains the airworthiness standards for transport category airplanes, would provide ready access to critical rules.

In preliminary discussions with foreign aviation authorities, with whom we try to harmonize our safety rules, they have expressed concern about consolidating parallel requirements in their counterparts to part 25. They have suggested that it may be more appropriate to place them in part 21 or elsewhere. Therefore, we specifically request comments from the public, including foreign authorities, on the appropriate place for these airworthiness requirements for type certificate holders.

We reserve additional sections in this proposal to include other subparts we would expect to create with future aging airplane rules, several of which are under development. Some of these proposals include similar language establishing the general airworthiness responsibilities of manufacturers and thus include some overlapping provisions. Once any proposal establishing these broad responsibilities becomes a final rule, we will delete the duplicative requirements from the other proposals and retain only that language pertinent to any specific new safety regulations (such as fuel-tank flammability reduction).

Except in one respect (discussed below), however, the ongoing-airworthiness requirements in Subpart I would not by their terms reach applicants for TCs with respect to new projects for which application is made after the effective date of the proposed rule. This is unnecessary because, when we adopt a new requirement for TC holders, there will be a corresponding amendment to part 25 expressly making compliance with the new, or a similar safety standard a condition for receiving a TC in the future. For example, in this proposal, the new requirements of § 25.981(b), (c) and (d) regarding FRM and IMM will govern future applications.

For safety reasons, however, we are requiring that any application for a type design change, whenever filed, not degrade the level of safety already created by the TC holder's presumed compliance with the subpart I rule. Currently, when reviewing an application for such a change, we employ the governing standards stated in part 21, specifically § 21.101. That section generally requires compliance with standards in effect on the date of application but contains exceptions that may allow applicants to show compliance with earlier standards. For example, if a change is not considered ''significant,'' the applicant may be allowed to show compliance by pointing to standards that applied to the original TC. (*See* AC 21.101–1, ''Establishing the Certification Basis of Changed Aeronautical Products,'' a copy of which can be downloaded from *http://www.airweb.faa.gov/rgl*).

With the adoption of subpart I rules, we must ensure that safety improvements that result from TC holder compliance with these requirements are not undone by later modifications. Therefore, even when we determine under § 21.101 that an applicant need not comply with the latest airworthiness standards, it will be required to demonstrate that the change would not degrade the level of safety provided by the TC holder's compliance with the subpart I rule. In the context of today's proposal, for example, this will mean that an applicant for approval of a design change would have to show that it would not increase the fuel tank flammability above the limits defined in this proposal or adversely affect the FRM or IMM established by the TC holder.

C. Applicability

1. Manufacturers and Holders of Type Certificates, Supplemental Type Certificates and Field Approvals

Today's proposal, if adopted, will impose requirements on TC holders for all affected transport category airplanes as well as STC holders and operators who have field approvals for auxiliary fuel tank designs. Not all airplanes would require the installation of an FRM or IMM. Those requirements would be based on the initial average flammability exposure analysis discussed in detail later in this document. However, the TC, STC or field approval holder would be required to develop and provide limitations on the types of alterations and operations permitted for the airplane in order to retain the validity of that initial analysis.

Today's proposal, if adopted, would apply not only to domestic TC holders, but also to foreign TC holders. This rule would be different from most type certification programs for new TCs, where foreign applicants typically work with their responsible certification authority, and the FAA relies, to some degree, upon that authority's findings of compliance under bilateral airworthiness agreements. No other certification authority has yet adopted requirements addressing fuel tank flammability for existing TCs. While some authorities have indicated an interest in adopting some type of requirements for new airplane designs, they may not adopt requirements

applicable to existing TCs. Accordingly, the FAA will retain the authority to make all the necessary compliance determinations, and where appropriate may request certain compliance determinations by the appropriate foreign authorities using procedures developed under the bilateral agreements. The compliance planning provisions of this proposed rule are equally important for domestic and foreign TC holders and applicants, and we will work with the foreign authorities to ensure that their TC holders and applicants perform the planning necessary to comply with those requirements.

As discussed briefly above, the proposed rule would require holders of existing type certificates to incorporate FRM or IMM into all new production airplanes if the fleet average flammability exposure level exceeds permissible levels. In past rulemakings where the FAA has required production cut-in of safety improvements, we have adopted rules prohibiting operators of airplanes produced after a specified date from operating those airplanes unless they are equipped with the improvements. This approach is effective in ensuring that U.S. operators receive the benefits of these safety improvements. But these rules do not apply to foreign operators, unless they operate U.S.-registered airplanes.

By requiring FRM or IMM separately from the operational rules proposed in this notice, the proposed rule would improve the safety of the overall fleet of larger transport category airplanes. This requirement would also facilitate the secondary market for these airplanes. Even if a manufacturer initially sells an airplane to a foreign operator who may not be required to have the system, the operator may later sell or lease it to a U.S. operator. The U.S. operator would be able to simply place it into service, rather than having to install a system. Given the frequency of airplane transfers in today's global economy, we think having these systems installed during production will provide significant long-term efficiencies since no retrofit would be required, as well as providing immediate safety benefits.

2. Airplanes

If adopted, this rule would apply, with some exceptions discussed below, to transport category turbine-powered airplanes with a maximum type-certificated capacity of 30 or more passengers, or a maximum payload capacity of 7500 pounds or more resulting from the original certification of the airplane or later increase in capacity. This would result in the coverage of airplanes where the safety benefits and the public interest are the greatest.

We are proposing to apply this rule to airplanes for which a passenger capacity of 30 or more has been approved at any time. In the past, some designers and operators have obtained design change approval to slightly lower existing capacity to avoid applying requirements mandated only for airplanes over specified capacities. Today's proposal would remove this possible means of avoiding compliance. It is also possible that an airplane design could be originally certificated with a capacity slightly lower than the minimum specified in this section, but through later design changes, the capacity could be increased above this minimum. Today's proposal addresses both of these situations by proposing to regulate all airplanes that have been approved for carriage of 30 or more passengers, or 7500-pound or more payload, at any time.

We considered applying this proposal to all part 25 airplanes. This would have resulted in modifications to all fuel tanks located in the fuselage that are normally emptied. However, smaller airplanes generally do not have a significant number of high flammability exposure fuel tanks. Few of the smaller transport category airplanes in the current fleet have center wing tanks that are normally emptied. While some of the smaller airplanes have auxiliary or normally emptied fuel tanks located within the fuselage contour, many of these airplane types use differential fuel pressure to transfer the fuel from the fuel tanks. The increased pressure results in a reduction in the fuel tank flammability by keeping the fuel vapors at a level where ignition is unlikely. We have determined that the benefits of including these airplane types in this proposal are not sufficient to warrant the cost.

Certain vintage airplanes type certificated before 1958, the beginning of the jet age, would be excluded from the requirements of this proposal. They are listed in § 25.1815(j). There are no known reciprocating-powered transport category airplanes currently in scheduled passenger service. Compliance would not be required for these specific older airplanes, because their advanced age and small numbers would likely make compliance economically impractical. If the public knows of other airplanes that may present unique compliance challenges, the FAA is interested in receiving comments. These comments may result in additional airplane models being excluded from the requirements of this proposed rule.

The proposal does not extend to airplanes used in all-cargo operations. Our analysis of the costs of extending the proposal to include these airplanes does not appear to be justified by the associated benefits. The potential loss of life in a single accident is much smaller on all-cargo planes of the size contemplated by today's proposal than on comparably sized passenger planes. The undiscounted cargo airplane costs would be about $261 million, with a present value of $110 million, while the benefits would be less than $1 million. However, the FAA does believe there is a risk to all-cargo airplanes because they share the same design features as at-risk passenger airplanes. We typically do not base our certification standards for transport category airplanes on use. Rather, our general philosophy is to address the performance characteristics of these airplanes because we believe all occupants should be protected against those designs that present a risk of serious injury or death.

We have not evaluated the risk to all-cargo airplanes because they are derivatives of passenger airplanes. The risk may be lower for all-cargo operations than for passenger operations. For example, if the risk of a fuel tank explosion per operating hour is the same for all-cargo planes as for passenger airplanes, the projected number of accidents for these planes is significantly less than one (0.15) in the next 50 years. This is because the projected number of miles flown by a cargo plane over the next 50 years is only 23 million miles. The risk may also be lower for all cargo operations because many cargo operations are conducted at night when the flammability of the fuel tanks is lower because of lower ambient temperatures.

The 747 has both a passenger version and a freighter. The Monte Carlo analysis conducted for the 747 included both types of airplanes, and was weighted primarily toward the passenger airplane because they make up the majority of the 747 fleet. Thus, it should be possible to model the risk of a fuel tank explosion for cargo airplanes separate from passenger airplanes. We request flammability analyses on all-cargo airplanes and on the passenger versions of the same airplane model, as well as any underlying data.

We have provided a breakdown of the estimated costs and benefits associated with requiring all-cargo airplanes be equipped with a means of reducing flammability in the preliminary regulatory evaluation. We believe that

the cost associated with providing a means of flammability reduction on newly designed cargo airplanes may be sufficiently low that it could make sense for all airplanes manufactured under a TC or amended TC applied for after the effective date of the final to have either an FRM or IMM. We believe there will be only a minimal cost associated with equipping newly designed all-cargo airplanes with a means of flammability reduction since the passenger version of the same model will be designed with such a system.

We request comment on whether, given the costs involved, the design rules, the production cut-in rules, or the operating rules, if adopted, should be applied to all-cargo airplanes.

Even with the categories of airplanes excluded that are discussed above, we recognize that this proposal is costly. To ensure that this rule is as cost effective as possible, we specifically request comments on whether there are other categories of airplanes or ways to distinguish among airplanes that would focus this rule on those where the benefits would be greatest. Any comments provided should include data to support the suggested exclusions or distinctions.

3. Fuel Tanks

The requirements proposed today would apply the proposed new FRM or IMM requirements to existing fuel tanks with a fleet average flammability exposure level that exceeds 7 percent. Main fuel tanks on existing airplanes, i.e., those that are designed both to feed fuel directly to one or more engines and to hold the required fuel reserves continually throughout each flight, are unlikely to be affected as they should have a fleet average flammability exposure level well below 7 percent.

For any fuel tank that is normally emptied and has a fleet average flammability exposure level that exceeds 7 percent average flammability exposure, if any portion of the tank is located in the fuselage contour, the proposal would require TC STC and field approval holders to develop IMM or FRM that reduces the flammability exposure to 3 percent average flammability exposure and that meets the 3 percent warm day requirements.

All other tanks with a fleet average flammability exposure level exceeding 7 percent would need to incorporate IMM, or FRM. If FRM is installed it would need to provide a fleet average flammability exposure at one of two levels: Tanks on airplanes manufactured pursuant to a type certificate applied for prior to June 6, 2001 would have to have an exposure level no greater than 7 percent; tanks on airplanes manufactured pursuant to a type certificate applied for after June 6, 2001 would have to have an exposure level either no greater than 3 percent or equivalent to that of a comparable conventional unheated aluminum tank (which could be either more or less than 3 percent).

The ARAC found fuel tanks that are normally emptied have higher flammability exposure times than main tanks. Because these tanks contain a high percentage of ullage during a significant portion of most flights, a larger number of potential ignition sources are exposed to fuel vapor space for an extended time. Additionally, when they are within the fuselage contour, they are not naturally cooled by external air, which causes the fuel vapor to be flammable for a significant portion of the airplane operating time.

Auxiliary fuel tanks are developed by TC holders, STC holders and, occasionally, by operators via field approvals, to increase the fuel capacity available on a type-certificated airplane. There are 74 different STCs for auxiliary fuel tanks in the airplanes potentially affected by the proposed rule. There are also field approvals for auxiliary tanks installed by airplane operators. Data submitted to the FAA as a result of SFAR 88 shows that fifteen of these auxiliary tanks have high flammability exposure fuel tanks. Some of these tanks have been installed in airplanes such as the DC–9 and DC–10 that do not have any other fuel tanks with high flammability exposure. Production of these airplane models ended long ago, so many of these airplanes will be at or near the end of their intended operational life at the end of the proposed compliance time given to the operators to incorporate FRM or IMM. Requiring the affected certificate holders to develop service instructions and the operators to incorporate FRM for these older fuel tanks increases the cost of the proposed rulemaking with fewer benefits than incorporation of FRM on newer airplane models. Therefore, the FAA specifically requests comments on including these auxiliary fuel tanks in the proposal. Information on the number of fuel tanks installed in the fleet and the remaining useful life of the affected airplanes should be provided.

Portions of fuel tanks that are located within the fuselage contour include those in either the pressurized or unpressurized section of the fuselage or those whose surfaces make up part of the pressurized compartment. Fuel tanks located within the cargo compartment and center wing tanks are considered to be located in the fuselage contour. Many center tanks have portions that extend from the center wing box to the wing. The compartments of the tank located within the wing would also be considered part of the tank located within the fuselage contour and the same flammability requirements would apply. Fuel tanks located in the horizontal stabilizer, which also include segments located inside the fuselage and portions that extend outside the fuselage contour, would be assessed in the same way. Fuel tanks have also been located within the vertical stabilizer. If no portion of these tanks is in the fuselage, these tanks would not be considered as located within the fuselage boundary.

4. Airplane Operators

The rule proposed today would also apply to operators of the affected aircraft other than those who operate pursuant to 14 CFR part 135, Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons On Board Such Aircraft. We are excluding part 135 operators, because we have determined that only a few airplanes operated under part 135 would be subject to the rule. This is because part 135 is currently limited to a carrying of capacity of 10 or fewer passengers and a payload of no more than 7,500 lb. We are in the process of revising part 135 and may consider increasing the payload capacity as part of that revision. If an increase in payload capacity is contemplated, we may also consider requiring FRM or IMM under part 135.

As discussed previously, in an effort to enhance the cost effectiveness of this rule, we specifically request comments on whether other categories of operations should be excluded. Any comments provided should include data to support the suggested exclusions or distinctions.

D. Proposed Requirements for Manufacturers and Holders of Type Certificates, Supplemental Type Certificates and Field Approvals

1. New Airplane Designs

Currently, § 25.981(c) establishes a requirement that fuel tank installation on all airplanes for which the type certificate was applied for after 2001 must have either a ''means to minimize the development of flammable vapors in the fuel tanks'' that would ''reduce the likelihood of flammable vapors, or a ''means to mitigate the effects of an ignition of fuel vapors * * *.'' We propose amending this section to address new airplane designs.

We propose to require those airplanes incorporating FRM to limit the fleet average flammability exposure to 3 percent, and to limit warm day exposure to 3 percent, for all normally emptied fuel tanks located, in whole or in part, in the fuselage. All other fuel tanks could either meet the 3 percent average flammability exposure limitation or have a level that is no higher than the exposure level in a conventional unheated aluminum wing tank that is cooled by exposure to ambient temperatures during flight. The advantage of the first option is that manufacturers using unconventional designs would not be required to conduct the modeling on an equivalent unheated aluminum wing tank that is a purely theoretical design. The advantage of the second option is that a manufacturer could increase the level of acceptable exposure based on the exposure characteristics of this theoretical wing design.

TC Applicants have proposed newer technology airplanes using composite wing skins or fuel tank designs with little exposed surface area. These designs may result in average fuel tank flammability exposure above the levels recommended by the ARAC. We expect future applicants will propose similar designs. For these airplane types, the applicant would have the option of demonstrating compliance by analyzing the fleet average flammability exposure of an equivalently designed wing made of aluminum for the model under evaluation. The thermal characteristics of the wing treated as a single fuel tank, as well as airplane specific parameters such as climb, cruise and descent profiles and flight length distribution, would be used as inputs to the flammability exposure analysis defined in Appendix L. This analysis would establish the maximum allowable flammability for the airplane model under evaluation.

The safety objective of an ''unheated aluminum wing tank'' that is proposed as the standard in this notice is consistent with the ARAC recommendation and 14 CFR 25.981(c). It does not provide a numerical standard to apply in future type certification programs and the demonstration of compliance requires the applicant to conduct an analysis of their design to establish the flammability of a conventional unheated aluminum wing tank. In certain cases the compliance demonstration would be simplified if a numerical standard were provided in the regulation. Therefore we are proposing to establish a numerical flammability exposure standard of 3 percent that can be used. This approach may have implementation advantages and should achieve the safety level intended by the ARAC recommendation and the current approach of § 25.981(c). We specifically request comments on which approach would be more workable and effective. If, based on comments received, we determine that a numerical standard alone is preferable, we may revise the final rule to adopt this approach.

In addition to designing normally emptied fuel tanks that meet the proposed requirements, the TC holder would be required to provide airworthiness limitations designed to prevent exceeding the exposure limits of this rule or degrading the performance and reliability of FRM or IMM provided by the TC holder. For example, the manufacturer may state that any changes to the fuel system may invalidate its exposure analysis. In such an instance, the party making subsequent changes would need to conduct its own exposure analysis to ensure that the affected fuel tanks remain within the applicable limits. Likewise, a manufacturer may limit the type of jet fuel acceptable for its systems, as a jet fuel with a lower flash point may invalidate the initial exposure analysis.

As discussed earlier, today's proposal would not apply to airplanes designed solely for all-cargo operations. This exclusion applies to airplanes that, either as a result of initial type certification or through later design changes, have no passenger carrying capability, except for carriage of supernumeraries.[10] Airplanes designed for all-cargo operations would continue to be subject to the existing requirements of § 25.981(c), which requires either means to minimize the development of flammable vapors in the fuel tanks or IMM. On the other hand, if an airplane that is designed for all-cargo operations is converted to an airplane equipped to carry passengers, including a ''combi'' airplane (part cargo, part passenger), this design change would make the airplane subject to these proposed requirements.

2. Existing Airplane Designs

Holders of existing TCs would be required to first conduct a fleet average flammability exposure to determine whether the rule proposed today would apply to their fuel tanks. If the exposure level for normally emptied fuel tanks within the fuselage exceeds 7 percent, design changes and instructions for IMM or FRM that limit both overall and warm day fleet flammability exposure levels (discussed later) to no more than 3 percent would need to be developed. All other normally emptied fuel tanks exceeding a 7 percent exposure limit would require design changes limiting exposure to 7 percent unless manufactured pursuant to a type certificate applied for after June 6, 2001, in which case the potentially more stringent requirements of existing § 25.981(c) would continue to apply.[11] Once design changes are developed, a second exposure analysis would need to be conducted to validate the design changes.

Even if no changes to existing fuel tanks are required based on the fleet average exposure analysis, the manufacturer would be required to develop the same type of airworthiness limitations as those required for new airplane designs.

The affected TC holders would also be required to submit compliance plans for the flammability analysis and the development of service instructions for an FRM or IMM. The contemplated compliance schedules and submissions are discussed later in this document.

Finally, today's proposal would require production cut-in for all airplanes manufactured after the required design changes are available. This section would apply only if the FAA has jurisdiction over the organization responsible for final assembly of the airplane. Section 25.1821(a) uses the same terminology as Annex 8 to the Convention on International Civil Aviation, which defines the limits of the FAA's authority under international law. In most cases, this refers to final assembly within the United States; there are limited circumstances where final assembly may occur in United States, but the responsible organization is under the jurisdiction of a foreign authority. It is also possible that final assembly could be done in another country by an organization over which the FAA has jurisdiction, such as a production certificate holder.

3. Auxiliary Fuel Tanks

Manufacturers and installers of auxiliary fuel tanks, whether manufactured under an amended TC, an STC or a field approval, would be required to conduct both an initial fleet

[10] These are cargo handlers and other persons who are typically carried on cargo-only airplanes to assist in the cargo operations.

[11] If this proposed amendment is not issued until after affected pending certification projects are completed, the final rule may revise the retrofit requirements proposed in § 25.1815 to reference Amendment 25–102 as the appropriate standard for fuel tanks on these airplanes other than those located in the fuselage.

average exposure analysis and an impact assessment. The first analysis would determine the exposure of the tanks for which they are responsible, while the second would determine whether those tanks negatively impact the flammability exposure of the tanks originally installed on the airplane.

Changes to TCs, including installation of auxiliary fuel tanks or changes in the capacity of fuel tanks, may result in increased fuel tank flammability exposure or adversely affect FRM or IMM.[12] Accordingly, the proposed rule would require a flammability exposure analysis of the auxiliary fuel tank design, an impact assessment to determine any adverse impact its design may have on the original or modified type design, and development of a flammability impact mitigation means (FIMM) to address adverse changes in flammability exposure.

STC holders or applicants for an amended TC affected by the proposed rule would need to conduct a flammability analysis using the ''Monte Carlo'' method defined in proposed Appendix L and discussed later in this document. A number of inputs are required to conduct this analysis. Airplane specific data, such as fuel management, fuel tank thermal characteristics, or airplane climb rate may not be readily available from the original TC holder. We intend the STC holders to obtain the information by working with the TC holder and operators of airplanes that have their tanks installed. Applicants would need to work with prospective customers. Operators have business agreements with the original TC holders and in many cases access to TC holder information they obtained when they purchased the airplane. Conservative assumptions or business agreements with the original TC holders are other possible methods of gathering airplane type specific data needed for the analysis.

If an increase in exposure above the allowable limits is identified, the holder of the STC or field approval would have to develop a FIMM and demonstrate how it will mitigate the impact of the increased exposure. One of the easiest methods may be simply deactivating the auxiliary tank or sealing off the venting to the affected tank. As another example, if an auxiliary fuel tank vents into a TC holder's tank for which FRM is provided, the venting may have to be modified to prevent adversely affecting the FRM's performance.

Finally, a validation analysis would be required for the auxiliary tanks that demonstrates that the auxiliary tank flammability exposure levels, as modified with the addition of FRM or IMM, do not exceed the acceptable limits. Likewise, a validation analysis would be required to demonstrate that the FIMM is effective in maintaining the level of exposure in other tanks determined by the manufacturer of the other tank. As is the case for TC holders of existing airplanes, holders of STCs and field approvals would need to develop future airworthiness limitations and meet all mandated compliance schedules should they decide not to deactivate the fuel tank.

For applicants for STCs and TC amendments, this proposal includes other design changes that could affect flammability exposure. Because this rule would require retrofit of airplanes to reduce flammability exposure, it would be counterproductive to allow future design changes that might negate the safety benefits of those retrofits.

Any design change to a TC subject to the requirements proposed in today's document that adds an auxiliary fuel tank, increases fuel tank capacity, or increases the flammability exposure of the existing fuel tank would have to meet the requirements of § 25.981 proposed today. This requirement is intended to apply primarily to future design changes, but it may also apply to design change projects that are pending when this rule is issued. For example, in addition to applying for a new TC for the Airbus Model A380, Airbus has also applied for an amendment to that TC for the Model A380–800F (freighter derivative). Among other design changes, this TC amendment would incorporate a new fuel tank in the fuselage contour that is normally emptied. Under this proposal, this fuel tank would have to be shown to meet the requirements of proposed § 25.981. Because of the increased technical complexity of auxiliary fuel tank installations resulting from this proposal once this final rule is adopted, field approvals will no longer be granted for these tanks on airplanes affected by this rule.

4. Methods of Mitigating the Likelihood of a Fuel Tank Explosion

As noted above, TC and STC holders may need to make design changes to their fuel tanks located, in whole or in part, within the fuselage to decrease their level of flammability exposure. The rule proposed today offers two options, IMM or FRM.

a. Flammability Analysis Using the Monte Carlo Method

For all fuel tanks, an analysis must be performed to determine whether the fuel tank, as originally designed, meets the fleet average flammability exposure limits discussed above. By ''average,'' we mean that the analysis of each fuel tank must be averaged over the entire flammability exposure evaluation time (FEET) (see footnote 8) of each airplane in the entire fleet. To determine the flammability exposure of fuel tanks, the ARAC used a specific methodology referred to as the Monte Carlo method.[13] We are proposing that any analysis of a fuel tank must be performed in accordance with this methodology, as detailed in proposed Appendix L and in the FAA document, Fuel Tank Flammability Assessment Method Users Manual.[14] We considered approving alternative methodologies in lieu of Appendix L, but we found that no other alternative considered all factors that influence fuel tank flammability exposure, which is the safety objective of this proposal.

The Monte Carlo method,[15] as commonly understood by scientists, is

[12] With the adoption of rules requiring the retrofit of fuel tanks in certain airplanes, we have to consider different issues in deciding what standards applicants for design change approvals must meet. Otherwise, the safety improvements that result from TC holder compliance with these requirements could be undone by later modifications. Therefore, even if we determine under § 21.101 that it is not necessary to require these applicants to comply with the latest airworthiness standards, it is still necessary for them to show that the change would not degrade the level of safety provided by the TC holder's compliance with the rule proposed today.

[13] This methodology determines the fuel tank flammability exposure for numerous simulated airplane flights during which various parameters such as ambient temperature, flight length, fuel flash point are randomly selected. The results of these simulations are averaged together to determine the fleet average fuel tank flammability exposure.

[14] As indicated in Appendix L, we intend to incorporate the users manual by reference into the final rule.

[15] *History of Monte Carlo method*

The method is called after the city in the Monaco principality, because of a roulette, a simple random number generator. The name and the systematic development of Monte Carlo methods dates from about 1944.

The real use of Monte Carlo methods as a research tool stems from work on the atomic bomb during the second world war. This work involved a direct simulation of the probabilistic problems concerned with random neutron diffusion in fissile material; but even at an early stage of these investigations, von Neumann and Ulam refined this particular '' Russian roulette'' and ''splitting'' methods. However, the systematic development of these ideas had to await the work of Harris and Herman Kahn in 1948. About 1948 Fermi, Metropolis, and Ulam obtained Monte Carlo estimates for the eigenvalues of Schrodinger equation.

In about 1970, the newly developing theory of computational complexity began to provide a more

useful for obtaining numerical solutions to problems which are too complicated to solve analytically. The method provides approximate solutions to a variety of mathematical problems by performing statistical sampling experiments on a computer. The method applies to problems with no probabilistic content as well as to those with inherent probabilistic structure.

Our use of this method to analyze fuel tank flammability exposure and define acceptable limits is based on the recommendation of the ARAC, which compared the flammability exposure of conventional unheated aluminum wing fuel tanks to that of tanks that are located within the fuselage contour and heated by adjacent equipment. Use of the Monte Carlo method allows us to consider variables from within defined distributions that represent possible operating conditions for the flight. The results of a large number of flights can then be used to approximate average flammability exposure over a large fleet of airplanes.

Variables include those affecting all airplanes in the transport category airplane fleet, such as: (1) Ground, overnight, and cruise air temperatures likely to be experienced worldwide; (2) fuel properties; and (3) conditions when the tank in question will be considered flammable. In addition, the analysis factors in specific airplane models characteristics, such as climb and descent profiles, fuel management, heat transfer characteristics of fuel tanks, maximum airplane operating temperature limitations, maximum airplane range for the airplane model, and the effectiveness of FRM (if installed).

The flammability analysis must include any model variations and derivatives for which the TC holder has obtained approval that affect fuel tank flammability exposure. Model variations that may affect fuel tank flammability could include changes in the fuel tank volume or usable fuel capacity, changes in the fuel management procedures, and engine changes that might affect parameters such as airplane climb rate or bleed air available if needed by an FRM. Other examples of configuration differences that may affect fuel tank flammability exposure are provided in the discussion of § 25.1817. The flammability analysis would also include all modifications and changes mandated by ADs that affect fuel tank flammability exposure as of the effective date of the rule. These ADs would only be those issued against any configurations developed by TC holders. The analysis would not address any ADs issued against modifications defined by a third party STC installed on affected airplanes. The result would be a configuration that is clearly understood by both industry and the FAA.

Mass loading and changes in fuel vapor concentration caused by fuel condensation and vaporization have been excluded from the flammability exposure analysis. The method used by the ARAC to establish the flammability exposure value as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability exposure calculation, it would have resulted in a significantly lower wing tank flammability exposure benchmark value. The ARAC analysis also did not consider the effects of the low fuel condition (or ''mass loading'') which would lower the calculated flammability exposure value for fuel tanks that are routinely emptied, such as center wing tanks. When the amount of fuel is reduced to very low quantities within a fuel tank, there may be insufficient fuel in the tank to allow vaporization of fuel to the concentration that would be predicted for any particular temperature and pressure.

The effect of condensation and vaporization in reducing the flammability exposure of wing tanks is comparable to the effect of the low fuel condition in reducing the flammability exposure of center tanks. Therefore, we consider these effects to be offsetting, so that by eliminating their consideration, the analysis will produce results for both types of tanks that are comparable. Accordingly, both factors have been excluded when establishing the flammability exposure limits in this proposal. During development of the harmonized special conditions for the Boeing 747, the FAA and the European Joint Aviation Authorities (JAA)/EASA agreed that using the ARAC methodology provides a suitable basis for determining the flammability of a fuel tank and consideration of these effects should not be permitted.

Using these variables, the Monte Carlo method would then be applied to a statistically significant number of flights (1,000,000), where each of the factors described above is randomly selected. The flights selected are representative of the fleet using the defined distributions of the variables. For example, flight one may be a short flight on a cold day with an average flash point fuel. Flight two may be a long flight on an average day with a low flash point fuel. This process is repeated until 1,000,000 flights have been defined in this manner.

For every one of the 1,000,000 flights, the Monte Carlo program calculates the amount of time the bulk average fuel temperature and ambient pressure in the fuel tank or compartment of interest would result in the fuel vapor being within the flammable range. This calculation is then used, in combination with the oxygen concentration in the fuel tank (if an FRM is installed), to establish whether the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average flammability exposure for the fleet of airplanes of a particular model type.

The determination of whether the fuel tank ullage is flammable is based on the temperature of the fuel in the tank or the compartment of interest, determined by the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel loaded for a given flight, which is randomly selected from data provided in tables in this appendix.

The Monte Carlo methodology has previously been recommended by ARAC and has been used in previous analyses by the affected certificate holders in evaluating the flammability exposure of fuel tanks conducted as part of evaluating the findings of SFAR 88. Therefore we expect the affected type certificate holders already have a good understanding and can comply with this requirement within the proposed timeframe of 150 days.

b. Ignition Mitigation Means

The proposed rule maintains the option introduced by Amendment 25–102 for affected manufacturers to use ignition mitigation as a means of protecting the airplane from the hazards associated with fuel tank flammability. IMM is a passive system that requires little attention once installed. IMM does not prevent an ignition in the fuel tank; rather, material absorbs the heat created by the fire. While a small fire could occur, an IMM system eliminates the

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precise and persuasive rationale for employing the Monte Carlo method. The theory identified a class of problems for which the time to evaluate the exact solution to a problem within the class grows at least exponentially with M. The question to be resolved was whether or not the Monte Carlo method could estimate the solution to a problem in this intractable class to within a specified statistical accuracy in time bounded above by a polynomial in M. Numerous examples now support this contention. Karp (1985) shows this property for estimating reliability in a planar multiterminal network with randomly failing edges. Dyer (1989) establish it for estimating the volume of a convex body in M-dimensional Euclidean space. Broder (1986) and Jerrum and Sinclair (1988) establish the property for estimating the permanent of a matrix or, equivalently, the number of perfect matchings in a bipartite graph. Discussion derived from *History of the Monte Carlo Method*, Sabri Pllana, *http://geocities.com/College Park/Quad/2435/index.html.*

possibility of a catastrophic fuel tank explosion.

We acknowledge that IMM presents maintenance challenges. The mitigation means (such as polyurethane foam, metal foil products and explosion suppression systems discussed within AC 25.981–2) must be reinstalled exactly as removed when the fuel tanks are opened up for maintenance actions. Replacement is particularly difficult because all voids must be removed. It also appears that the materials used for mitigation (particularly the polyurethane foams) may be prone to compression, thus reducing the usable life of the material.

Nevertheless, given the potential effectiveness of IMM, the FAA believes we should continue to allow installation of IMM as a means of compliance with the requirements proposed today. A detailed discussion of acceptable means of compliance for manufacturers choosing to comply with the IMM option is provided in AC–25.981–2.

c. Flammability Reduction Means

Alternatively, a TC or STC holder could decide to use an FRM that limits the exposure level of the tanks. For fuel tanks that are normally emptied and located within the fuselage contour, the exposure would have to be limited to 3 percent under two sets of conditions, overall fleet exposure and warm day fleet exposure. Both of these conditions would be evaluated using the Monte Carlo method described below. For all other fuel tanks, the 3 percent limit would apply only to the overall fleet exposure.

The proposed flammability exposure requirements are intended to provide an additional layer of protection to the existing certification standards that require designs to preclude fuel tank ignition sources. This balanced risk management approach of precluding ignition sources and reducing flammability exposure in certain fuel tanks provides two independent layers for preventing fuel tank explosions in those tanks. The proposed requirements could be met by a highly reliable ''single-string'' (non-redundant) inerting-based FRM, allowing for limited operation of airplanes with an inoperative FRM until repairs could be made. These requirements could also be met by a cooling-based FRM. Compliance with these requirements has been shown to be practical using existing technology.

i. Accounting for System Reliability and Performance Issues

As discussed in the background section of this document, previous studies of inerting-based FRM showed that, if inerting systems were required to be operational for all flights, the system would be required to have at least some redundant design features and would not be practical. That is, it would require most components to be duplicated to provide a back-up function in the event the primary component failed. A requirement for a redundant FRM that would continue to operate after component failure would increase the weight and complexity of an inerting system. This may result in a system that would not be practical for commercial airplanes at this time. The overall fleet flammability exposure analysis would assume some periods of inoperability. However, we would require that the contribution to average flammability exposure due to either reliability (during periods when the system is inoperative) or system performance (during periods when the system does not have the capacity to maintain a non flammable tank), be limited to 1.8 percent. This gives the designer freedom to engineer the system, and allows for some operation of airplanes with an inoperative FRM until repairs can be made at an appropriate maintenance facility.

ii. Warm Day Fleet Flammability Exposure

The warm day exposure analysis is intended to ensure minimum FRM system performance levels when there is the greatest risk to safe flight. Therefore, the 3 percent flammability exposure limit excludes system reliability related contributions that are included in the overall fleet flammability exposure assessment. Compliance with this proposal would require conducting an analysis in accordance with Appendix L for each of the specific phases of flight during warmer day conditions defined in the proposal. The flammability exposure of the tank in question would be determined for the ground, takeoff and climb phases as separate values, without including the times when the FRM is not available because of failures of the system or dispatch with the FRM inoperative. The fleet flammability exposure level of each fuel tank for ground, takeoff, and climb phases of flight during warm days must not exceed 3 percent of the flammability exposure evaluation time in each of the three phases.

iii. Reliability Reporting

Today's proposal, if adopted, would require that the applicant demonstrate effective means to ensure collection of FRM reliability data so that the effects of component failures can be assessed on an on-going basis. The proposed reporting requirement applies to applicants and holders of the affected TCs, STCs, and field approvals.

The rule would require the TC or STC holder to provide the FAA with summaries of the FRM reliability data and compliance with Appendix K on a quarterly basis for the first five years after the FRM is installed and operational. After that time, continued quarterly reporting requirements may be replaced with other reliability tracking methods approved by the FAA oversight office. The requirement for quarterly reports may be eliminated if the FAA determines that the reliability of the FRM meets, and will continue to meet, the requirements of the rule.

Operators would not be required to report FRM reliability information. We intend TC holders to gather the needed data from operators using existing reporting systems that are currently used for airplane maintenance, reliability and warranty claims. We anticipate the operators would provide this information through existing business arrangements between the TC holders and the airlines.

iv. Reliability Indication and Maintenance Access

The proposed rule would require that indicators be provided to identify failures of the FRM, so that appropriate actions can be taken to maintain the reliability of the FRM. The need to provide indication of the FRM status will depend on the particular FRM design. Various design methods may be used to make sure an FRM meets the reliability and performance requirements. These may include a combination of system integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication or maintenance check procedures could be used to limit exposure to latent failures within the system, or high inherent reliability may be used to make sure the system will meet the fuel tank flammability exposure requirements.

The need for FRM indications and the frequency of checking system performance (maintenance intervals) must be determined as part of the FRM fuel tank flammability exposure analysis. The determination of a proper maintenance interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification or as part of the FAA review process for airplanes manufactured under existing

TCs or auxiliary fuel tanks under existing STCs.

The rule would also require that sufficient accessibility to FRM status indications be provided for maintenance personnel. We intend that maintenance personnel or the flightcrew have access to any indications that must be accessed at intervals established by the FRM design approval holder when demonstrating compliance with the reliability requirements for the FRM. Access doors and panels to the fuel tanks with FRMs and to any other enclosed areas that could contain hazardous atmosphere under either normal conditions or failure conditions would need to be permanently stenciled, marked, or placarded to warn maintenance personnel of the possible presence of a potentially hazardous atmosphere. The proposal for markings does not alter the existing requirements that must be addressed when entering airplane fuel tanks.

d. Service Instructions and Service Bulletins

If the flammability exposure analysis shows that the average exposure level for any fuel tank exceeds 7 percent, the TC holder would be required to develop design changes and service instructions for either FRM or IMM.

Modifications incorporated into existing airplanes, including safety related changes (design and/or maintenance) that are mandated by AD, are typically made by operators using service instructions developed by the TC holders, commonly referred to as service bulletins. In this proposal, service instructions must contain sufficient information for the operator to incorporate the design change and any associated procedures and airworthiness limitations. They may include specific step-by-step procedures and information needed by the operator, such as parts lists and drawings. Therefore, the proposed rule would require TC holders to develop and submit for approval by the FAA, not just data defining a proposed design change, but all of the information necessary to enable an operator to comply with the proposed operational rules, discussed later.

e. Critical Design Configuration Control Limitations (CDCCL)

If adopted, the rule would require defining airworthiness limitations, including Critical Design Configuration Control Limitations (CDCCL), inspections, and other procedures for fuel tanks to prevent exceeding the applicable flammability exposure limits. For this proposal, CDCCL include those features of the design that must be present or maintained for compliance with the requirements of § 25.981(b) and (c) for the operational life of the airplane. For example, certain fuel tanks may rely on natural cooling to meet the flammability exposure levels within this proposal. Changes to the airplane, such as installing a fuel re-circulation system, hydraulic heat exchanger in the fuel tank, or a heat source adjacent to the fuel tank, may affect fuel tank flammability. The CDCCL would be necessary in this example to prohibit the addition of heat to the fuel tank. Another example of CDCCL might include limits on operation with certain fuel types such as JP–4. We expect all fuel tanks, even those in airplanes that do not have high flammability fuel tanks, would need to have CDCCL defined so that future modifications do not increase the flammability above the mandatory limit. The proposal applies the same requirements already applied to fuel tank ignition source prevention in § 25.981(b) to the FRM or IMM.

The proposal also includes the requirement that visible means identifying CDCCL are present. Our intent here is to prevent alterations to critical features of the system. As the visible identifications are critical to the FRM or IMM system, they are also considered to be CDCCL. Any tampering or removal would be in violation of the CDCCL. These CDCCL, inspections, or other procedures would be documented as airworthiness limitations in the ICA.

Under the proposal, all fuel tanks, regardless of flammability exposure, must be subject to airworthiness limitations consisting of CDCCL, inspections, or other procedures. The purpose of these limitations is to prevent increasing the flammability exposure of the tanks above that permitted under this section and to prevent degradation of the performance of any means installed in accordance with this section. For example, certain fuel tanks may rely on natural cooling or use of certain fuel types to meet the flammability levels within this proposal. Therefore, CDCCL may be required that define the critical features, such as—

- Flammability exposure of the unheated aluminum wing tank,
- Cooling rate,
- Limits on heat input,
- Limits on use of high volatility fuels such as JP–4,
- Quantity of engine bleed air flow that is used for inerting,
- Limits on penetrations of the fuel tank,
- Limits on any changes to fuel management that may affect FRM,
- Limits on changes to any placards or means used to visibly identify critical design features of the fuel tank system that must not be compromised for the operational life of the airplane.

As discussed above, airworthiness limitations, such as those proposed today, are part of the ICA. TC holders would need to make available to affected parties pertinent changes to the ICAs. (The term ''make available'' is used in the same sense that it is used in § 21.50.) We do not intend by this proposal to alter or interfere with the existing commercial relationships between TC holders and these other persons. We anticipate that TC holders would be able to be reasonably compensated for developing these documents, as they are under current practice.

The proposed rule would require creation of an Airworthiness Limitations Section (ALS), unless previously established. The ALS is required by current part 25 and includes those items that have mandatory inspection or replacement times related to fuel systems and structure. The ALS is included in the ICA, approved as part of certification, and distributed with an airplane on delivery. In this way the ALS is visible to all who need it and who would be required to comply with it under §§ 91.1509, 121.917, 125.509 and 129.117 of this proposal. The current part 25 ALS and ICA requirements apply only to airplane types for which the TC application was made after Amendment 25–54 (adopted in 1981) and were developed for structural considerations. As a result, they are not applicable to many current airplanes and do not currently contain information for other systems.

For those TC holders of airplanes that currently do not have an ALS, the intent of this proposal is to require an ALS only for fuel tank safety related limits. This proposal would not require that the ALS for these airplanes include the other requirements for an ALS established under Amendment 25–54 to part 25, or a later amendment. For those TC holders or applicants with airplanes certified to Amendment 25–54 or later, the existing ALS would be revised to include the fuel tank system airworthiness limitation items (ALI).

f. Compliance Planning

Historically, the FAA has worked together with the TC holders when safety issues arise, in order to identify solutions and actions that need to be taken. Some of the safety issues that have been addressed by this process include those involving aging aircraft structure, thrust reversers, cargo doors,

and wing icing protection. While some manufacturers have promptly addressed these safety issues and developed service instructions, others have not applied the resources necessary to develop service instructions in a timely manner. This has caused delay in the adoption of corrective action(s). A more uniform and expeditious response is necessary to address fuel tank safety issues. Because this proposal sets a precedent in introducing part 25 requirements for holders of existing TCs, changes to existing TCs, and manufacturers, it is the FAA's expectation that they will work closely with the FAA oversight office in putting together a compliance plan for developing the required FRM or IMM.

In order to provide TC holders and the FAA with assurance that the TC holders understand what means of compliance is acceptable and have taken necessary actions (including assigning sufficient resources) to achieve compliance with the proposed rule, we are proposing a compliance planning requirement. This requirement is based substantially on ''The FAA and Industry Guide to Product Certification,'' which describes a process for developing project-specific certification plans for type certification programs. This Guide may be found in the docket. This planning requirement would not apply to future applicants for TCs. Since this type of planning routinely occurs at the beginning of the certification process, no additional compliance planning is required for future applicants.

The Guide recognizes the importance of ongoing communication and cooperation between applicants and the FAA. The proposed planning schedule, while regulatory in nature, is intended to encourage establishment of the same type of relationship in the process of complying with this rule, if adopted.

One of the items required in the plan is, ''If the proposed means of compliance differs from that described in FAA advisory material, a detailed explanation of how the proposed means will comply with this section.'' FAA advisory material is never mandatory, because it describes one means, but not the only means of compliance. In the area of type certification, applicants frequently propose acceptable alternatives to the means described in advisory circulars. But when an applicant chooses to comply by an alternative means, it is important to identify this as early as possible in the certification process to provide an opportunity to resolve any issues that may arise that could lead to delays in the certification schedule.

The same is true for the fuel tank flammability reduction requirement. As discussed earlier, timely compliance with this section is necessary to enable operators to comply with the operational requirements of this proposal. Therefore, this item in the plan would enable the FAA oversight office to identify and resolve any issues that may arise with the compliance plan without jeopardizing the TC holders ability to comply with this section by the compliance time.

i. Compliance Plan for Flammability Exposure Analysis

The proposed rule would require submission of a compliance plan within 60 days of the effective date of the final rule for the flammability exposure analysis required by the proposed rule. The intent of the proposal is to promote early planning and communication between the certificate holders and the FAA. The exposure analysis would need to be completed within 150 days of the rule's effective date. Thus, the 60 day planning submission should provide sufficient time for the FAA to discuss any concerns that it may have over how the affected party intends to analyze fleet average flammability exposure.

ii. Compliance Plan for Design Changes and Service Instructions

Under today's proposal, each holder of an existing TC would need to submit to the FAA oversight office a compliance plan for developing design changes and service instructions within 210 days of the rule's effective date.

TC holders and applicants would have to correct a deficient plan, or deficiencies in implementing those plans, in a manner identified by the FAA oversight office. Deficiencies in the compliance plan would need to be corrected within 30 days of notification by the FAA. This approach differs from the original type approval process. Applicants for type certificates face commercial pressures, not regulatory deadlines, so the FAA can permit them to resolve identified deficiencies on their own schedule. Such leeway is not appropriate here because operators who are subject to regulatory deadlines are dependent on TC holders' timely compliance with these requirements. However, before the FAA formally notifies a TC holder or applicant of deficiencies, we will contact it to try to understand the deficiencies and develop a means of correcting them. Therefore, the notification referred to in this paragraph should document the agreed corrections.

The ability of an operator to comply with the proposed operating rules will be dependent on TC holders complying with the requirement to develop design changes and service instructions. The FAA intends to carefully monitor compliance and take appropriate action if necessary. Failure to comply by the dates specified in the final rule would constitute a violation of the requirements and could subject the violator to certificate action to amend, suspend, or revoke the affected certificate (49 U.S.C. 44709). It could also subject the violator to a civil penalty of not more than $25,000 per day per certificate until § 25.1815 is complied with (49 U.S.C. 46301).

iii. Compliance Plan for Auxiliary Fuel Tanks

The proposed rule would also establish a timeframe in which affected STC holders, applicants for an amended TC, and operators using fuel tanks pursuant to a field approval must submit for approval (to the FAA oversight office) a flammability exposure analysis for their design changes. The proposal includes a 12-month timeframe to complete the analysis. Any applicant whose STC or TC amendment is not approved within the 12-month compliance period would have to complete the analysis before approval.

The proposed rule would also require submission for approval of an impact assessment of the fuel tank system, as modified by the STC holder's design change. The purpose of this proposal is to identify any features of the modification to the original type design that may violate the critical design configuration control limitations developed by the original TC holder. For example, if an FRM that utilized inerting is incorporated into an airplane, a CDCCL would likely be developed that would limit venting of air into the fuel tank, because it could introduce oxygen into the tank, resulting in a flammable vapor space. In this case the STC holder would need to assess its design and identify any violation of the CDCCL identified for the FRM. Results from the analysis would be provided to the FAA in the form of a report or summary letter.

Supplemental type certificate holders would have to submit the impact assessment within six months after we approve the TC holder's CDCCL. Applicants whose design changes are not approved within that six-month period would have to submit the assessment before approval of the change. Once the CDCCL is approved, the TC holder would be required to make them available to other affected persons, including those subject to this

section. We consider the six-month period more than enough to perform the required assessment. The resulting service instructions would be required to show compliance with the applicable flammability requirements and to address any adverse effects of the design change on any IMM or FRM developed by the TC holder.

g. Compliance Schedule

Table 2 contains compliance dates for the required submissions. This table provides specific dates for each Boeing and Airbus model airplane that has fuel tanks whose average flammability exposure exceeds 7 percent. A compliance time of 24 months from the effective date of the final rule is proposed for all other models subject to this proposal (if the flammability exposure analysis shows an average exposure level exceeding 7 percent). We established the compliance dates proposed in this table after consideration of the time needed by the TC holders to develop the means to address fuel tank flammability exposure. We anticipate development of an FRM or IMM would take the affected TC holder about 2 years. The dates in the proposal were based on the assumption that it would be adopted well before the end of 2005. However, the rulemaking process took longer than originally anticipated. Consequently, given the specific compliance dates I the proposed rulemaking and the likelihood that finalization of the rules will be later than expected, there may not be as much time allowed for compliance as originally planned. We recognize that compliance intervals may need to be adjusted and will consider your comments on this condition.

On February 17, 2004, the FAA Administrator announced that the agency is developing a proposal for new rules that would require reducing the flammability exposure of new production transport category airplanes and existing transport category airplanes with high-flammability fuel tanks. Since then, Boeing has announced plans to incorporate FRM in newly produced airplanes and to make service instructions available for the airplane models listed in this notice. Boeing has also submitted applications for type certification of flammability reduction systems. On February 15, 2005, we published a Special Conditions No. 25–285–SC for flammability reduction means on the Boeing Model 747 (70 FR 780068563). Airbus flew an A320 [16] in August 2003 with the prototype FAA inerting system, but has not committed to production incorporation or development of service instructions for any flammability reduction means on its airplane models.

While Airbus and Boeing may have less than 2 years from the effective date of the final rule to develop an FRM or IMM for some of their models, we know that both companies have been considering these improvements well in advance of this rulemaking. The proposed compliance dates are thus staggered to allow the engineering resources of the TC holders to develop design means for all of their models. The proposed dates are established based on both our assessment of when it is feasible for TC holders to comply and the risks associated with particular airplane models, due to the flammability of the fuel tanks and numbers of airplanes in the fleet. For example, the Boeing Model 747 is first, followed by the Boeing Model 737. The first Airbus model affected is the A320. The proposed dates will support the retrofit of airplanes at the earliest reasonable time to achieve the safety benefits intended by this rulemaking.

The compliance times proposed for airplane and fuel tank manufacturers are also used as the basis for the proposed compliance dates for introduction of these systems into the operators' fleets under parts 91, 121, 125, and 129. Extension of the compliance dates for development of the service instructions by the certificate holders would either reduce the amount of time available to operators or delay full deployment of these safety improvements. As discussed later in this proposal for the operational requirements, incorporation of FRM or IMM will likely require access inside the fuel tanks.

TABLE 2

Model	Service instruction submittal date
Boeing	
747 Series	December 31, 2005.
737 Series	March 31, 2006.
777 Series	March 31, 2006.
767 Series	September 30, 2006.
757 Series	March 31, 2007.
707/720 Series	December 31, 2007.
Airbus	
A319, A320, A321 Series.	December 31, 2006.
A300, A321 Series	June 30, 2007.
A330, A340 Series	December 31, 2007.
All other affected models.	Within 24 months of effective date of this amendment.

E. Proposed Requirements for Airplane Operators

The proposed operating rules would prohibit the operation of certain transport category airplanes operated under parts 91, 121, 125, and 129 beyond specified compliance dates, unless the operator of those airplanes has incorporated approved IMM, FRM or FIMM modifications and associated airworthiness limitations for the affected fuel tanks. The proposed rules would not apply to airplanes used only in all-cargo operations.

This rulemaking also includes a proposal to create new subparts that pertain to the support of continued airworthiness and safety improvements in the following parts of Title 14 Code of Federal Regulations:

- Part 91, General Operating and Flight Rules;
- Part 121, Operating Requirements: Domestic Flag and Supplemental Operation;
- Part 125, Certification and Operation: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons On Board Such Aircraft; and
- Part 129, Operations: Foreign Air Carriers and Foreign Operators of U.S.-registered Aircraft Engaged in Common Carriage.

As discussed earlier, this proposal does not include part 135, since the number of airplanes in part 135 operation that would be affected by these proposals is relatively small. In the event changes to part 135 result in a greater number of affected airplanes operating under that part, the FAA will reassess the need to apply these proposed requirements to that part.

The FAA believes that inclusion of certain rules under the new subparts will enhance the reader's ability to readily identify rules pertinent to continued airworthiness. Unless stated otherwise, our purpose in moving requirements to the new subparts is to ensure easy visibility of those requirements applicable to the continued airworthiness of the airplane. We do not intend to change their legal effect in any other way. The new subparts are substantially the same and accordingly are not discussed separately here. Table 3 illustrates what proposed and existing requirements will be included in the new subparts. Each new subpart is titled ''Continued Airworthiness and Safety Improvements.'' The proposed new subparts consist of relocated, revised, and new regulations pertaining to continued airworthiness of the airplane.

[16] *Flight-Testing of the FAA Onboard Inert Gas Generation System on an Airbus A320*, DOT/FAA/AR–03/58, dated June 2004.

TABLE 3.—NEW SUBPARTS FOR PARTS 91, 121, 125, AND 129

Part 91 new/relocated rules within proposed subpart K	Part 121 new/relocated rules within proposed subpart Y	Part 125 new/relocated rules within proposed subpart M	Part 129 new/relocated rules within proposed subpart B
§ 91.1501, Applicability (new)	§ 121.901, Applicability	§ 125.501, Applicability	§ 129.101, Applicability.
§ 91.1503, Reserved	§ 121.903, Reserved	§ 125.503, Reserved	§ 129.103, Reserved.
§ 91.1505, fuel tank system maintenance program.	§ 121.905, Electrical wiring interconnection systems (EWIS) maintenance program.	§ 125.505, Fuel tank system inspection program.	§ 129.105, Electrical wiring interconnection systems (EWIS) maintenance program.
§ 91.1507, Repairs assessment for pressurized fuselages (formerly § 91.401(a)).	§ 121.907, Fuel tank system maintenance program.	§ 125.507, Repairs assessment for pressurized fuselages (formerly § 125.248(a)).	§ 129.107, Fuel tank system maintenance program.
§ 91.1509, Reserved	§ 121.909, Reserved	§ 125.509, Reserved	§ 129.109, Reserved.
§ 91.1511, Reserved	§ 121.911, Reserved	§ 125.511, Reserved	§ 129.111, Reserved.
	§ 121.913, Aging airplane inspections and records reviews (formerly § 121.368).	.....	§ 129.113, Supplemental inspections for U.S.-registered aircraft (formerly § 129.16).
	§ 121.915, Repairs assessment for pressurized fuselages (formerly § 121.370(a)).	.....	§ 129.115, Repairs assessment for pressurized fuselages (formerly § 129.32(a)).
§ 91.1513, Reserved	§ 121.917, Supplemental inspections (formerly § 121.370(a).	.....	§ 129.117, Aging airplane inspections and records reviews for U.S.-registered aircraft (formerly § 129.33).

1. Requirement to Install and Operate FRM, IMM or FIMM

The proposed rules would prohibit certificate holders from operating any affected airplane after dates specified, unless IMM, FRM or FIMM, as applicable, are installed and operational for any fuel tank for which they are required. The safety objective of these proposed rules is to have the required modifications installed and operational at the earliest opportunity.

The proposed rule would require that operators of the affected airplanes incorporate applicable maintenance program changes before returning an airplane to service after accomplishing any required modifications.

For some of the affected airplanes, manufacturer compliance with the proposed requirements may not result in any design changes, but would result in development of airworthiness limitations in the form of maintenance actions, operational procedures, or CDCCL, as previously discussed. In these cases the affected operators would be required to incorporate these limitations within one year after their approval by the FAA oversight office. The FAA will inform the affected operators and principal inspectors of the availability of the approved information.

Once an operator revises its maintenance or inspection program, it is important to make sure that later alterations to the airplane do not degrade the level of safety provided by these revisions. The proposed rules would require future applicants for approval of design changes to develop new airworthiness limitations for new auxiliary fuel tanks and other design changes affecting fuel tank flammability. To ensure that these airworthiness limitations are implemented, operators who incorporate these design changes into their airplanes would be required to revise their maintenance and inspection programs to incorporate the corresponding airworthiness limitations.

Today's proposal would require operators to submit the proposed maintenance and inspection program changes to their FAA Principal Inspector for review and approval.[17] This review would include the integration of the applicable airworthiness limitations for the TC and any STC and field approved auxiliary fuel tank to ensure their consistency and compatibility in the maintenance or inspection program. Guidance will be provided to operators and principal inspectors regarding how to address any deviations that may be proposed by the affected operators from the information approved by the FAA oversight office. As airworthiness limitations, these cannot be changed without FAA approval, nor are they subject to maintenance review board or other maintenance program development processes.

[17] A part 91 operator would send the relevant information to either their principal inspector or Flight Standards District Office, as applicable.

2. Authority To Operate With an Inoperative FRM, IMM or FIMM

Generally, the FAA does not require operators to use or maintain equipment installed on airplanes prior to a uniform compliance date. In this proposal, we take a different approach. The safety advantages associated with a fuel tank system equipped with an FRM or IMM design, as modified by any FIMM, are so compelling that we propose requiring that operators use these systems as soon as they are available. We have accommodated the difficulties faced by operators in making the required design changes by providing a phased-in compliance schedule that extends up to seven years after the manufacturer's compliance date for each model. Accordingly, an operator may not operate any airplane with fuel tanks equipped with FRM, IMM or FIMM, unless those systems are fully operational. The sole exception is when the systems are inoperative and the conditions and limitations specified in the operator's Minimum Equipment List (MEL) are met.

The method used to allow operation of an airplane when an FRM is inoperative would be to include the FRM dispatch relief in the FAA-approved MEL. The MEL contains a list of equipment that may be inoperative for a defined period of time. Under § 91.213 and similar regulations, the airplane may be dispatched with inoperative equipment in accordance with the Master Minimum Equipment List (MMEL).

The FAA Flight Operations Evaluation Board (FOEB) would establish the MMEL dispatch relief interval for an FRM based on data submitted by the applicant to the FAA. The expected MMEL dispatch relief interval is one of the contributing factors affecting the overall system reliability analyses that must be established early in the design of the FRM. The proposed requirements of Appendix K allow the designer to choose to design a highly reliable FRM and then request longer MMEL dispatch relief intervals when submitting their data to the FOEB.

This proposal does not recommend the adoption of a specific MMEL dispatch inoperative interval at this time. However, the comments received from the NTSB on to the proposed special conditions for the Boeing 747 indicate that the FRM should be treated like other non-redundant safety equipment, such as the flight data recorder. The recorders are allowed a 3-day MMEL inoperative interval. We specifically request public comment on the proposal to allow the current FOEB process to establish the MMEL interval rather than requiring a specific maximum interval.

3. Compliance Schedule

To achieve the safety benefits of this initiative, we believe it is necessary to have a mandatory schedule for phasing in the design changes rather than to rely solely on market forces to drive the production and availability of parts and normal maintenance scheduling for the installation of the FRM, IMM, or FIMM. Accordingly, this rule, if adopted, would require at least 50 percent of the affected airplanes be outfitted within four years after the relevant TC holder is required to comply with the proposed requirements. The remainder of the operator's fleet would have to comply with the final rule within seven years after the specified date. The affected fleet would include those airplanes that have field or STC approved auxiliary fuel tanks. Certificate holders that operate only one airplane of an affected model would have to modify that airplane within the seven-year compliance period.

The proposed compliance schedule of 7 years after TC holders to develop service instructions, while long, should allow for the approval of the service instructions for IMM, FRM, or FIMM, manufacture of modification parts for a large fleet of airplanes, and accomplishment of the modifications with minimum disruption of normal maintenance schedules. Typically, fuel tanks are only accessed during heavy maintenance checks that are done on a schedule that is established during development of the maintenance program. The compliance dates proposed for the operational rules were developed to allow for the majority of the modifications to be done during these heavy maintenance checks. Introduction of FRM, IMM or FIMM outside of normally scheduled maintenance would increase the cost to the operators, because extra tank entry and airplane down time would be needed.

Some airplane types or specific airplanes within an operator's fleet may not be scheduled for normally scheduled maintenance, where the fuel tanks would be opened, during the 7-year compliance time after service instructions become available. These airplanes would require incorporation of modifications outside of the normally scheduled maintenance. We have determined the number of airplanes that would be affected is small and that further lengthening the compliance period would not achieve the safety benefits of this proposal in a timely way. Also, we anticipate that some of the upcoming ADs to address ignition source issues will occur in this time period and in some cases will require fuel tank entry. Compliance with the AD may provide additional opportunities for incorporating approved FRM, IMM or FIMM if not occurring during normal scheduled maintenance. These issues are further discussed in the regulatory evaluation.

F. Additional Provisions

1. Relationship of This Proposal to Aging Airplane Regulatory Initiatives

As part of our broader review of several important initiatives comprising the Aging Airplane Program, we have revised certain compliance dates in existing rules and pending proposals so that operators can make required modifications during scheduled maintenance. Changing compliance dates affects our ability to expedite some aspects of this program but reduces the costs of the rules and proposals in place to deal with aging airplanes. Notice of these changes and a description of our Aging Airplane Program review appeared in the **Federal Register** on July 30, 2004 (69 FR 45936). In addition to this Fuel Tank Flammability Reduction proposal, the actions affected by these revisions include:

- Aging Aircraft Program (Widespread Fatigue Damage (proposal),
- Aging Airplane Safety (interim final rule), and
- Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (proposal).

Today's proposal, if adopted, would also affect compliance with SFAR 88 and potentially make it less costly. The safety reviews following the TWA 800 accident led us to require that the fuel quantity indication system wiring entering high flammability tanks incorporate either adequate separation or energy limiting devices, known as transient suppression devices, on the Boeing 737 and 747 to protect the tank from ignition sources. As part of the safety reviews of SFAR 88, we have identified other models that likewise would need a transient suppression device. We have determined that if FRM are incorporated in high flammability fuel tanks, ADs requiring installation of devices to protect the fuel quantity system wiring will no longer be needed. We have not yet estimated the potential savings and have not included these savings in the current regulatory evaluation. We specifically request comments regarding the savings that would be achieved if electrical energy limiting devices were not required on wiring entering high flammability fuel tanks affected by this proposal.

2. FAA Advisory Material

We are developing extensive guidance material to supplement the proposed rule, including a revised AC 25.981–2 to include guidelines on conducting a fuel tank flammability exposure assessment using the Monte Carlo methodology and developing IMM and FRM. It will also include guidance on development of the airworthiness limitations section, confined space hazards and markings, documentation required by the FAA, and reporting methods. We have incorporated some comments on these topics from a group of specialists at the Aerospace Industries Association, which included airplane manufacturers, airline operators and manufacturers of inert gas generating equipment.[18] The group provided advice on fuel tank inerting and use of the Monte Carlo methodology. We will invite public comments on the proposed ACs (which references the Monte Carlo User's Manual) by separate notice published in the issue of the **Federal Register**.

3. FAA Oversight Office

We are also requiring affected persons to submit various compliance materials to the FAA Oversight Office, defined in proposed § 25.1803(c). The FAA Oversight Office is the aircraft

[18] A copy of the AIA report is included in the docket for this rulemaking.

certification office or office within the Transport Airplane Directorate having oversight responsibility for the relevant TC or STC, as delegated by the Administrator. For example, with respect to fuel-tank flammability issues, TC and STC holders must obtain approvals from the responsible office in the FAA's Aircraft Certification Service. In other contexts, we have described the FAA office performing these functions as the ''cognizant FAA office.''

Table 4 lists the FAA offices that currently oversee issuance of TCs and amended TCs for manufacturers of large transport category airplanes.

TABLE 4.—FAA OFFICES THAT OVERSEE TYPE CERTIFICATES

Airplane manufacturer	FAA Oversight Office
Aerospatiale	Transport Airplane Directorate, International Branch.
Airbus	Transport Airplane Directorate, International Branch.
BAE	Transport Airplane Directorate, International Branch.
Boeing	Seattle Aircraft Certification Office.
Bombardier	New York Aircraft Certification Office.
Embraer	Transport Airplane Directorate, International Branch.
Fokker	Transport Airplane Directorate, International Branch.
Gulfstream	Atlanta Aircraft Certification Office.
Lockheed	Atlanta Aircraft Certification Office.
Boeing/McDonnell-Douglas Corp	Los Angeles Aircraft Certification Office.

4. Workplace Safety Issues

Because we would require that maintenance personnel be given access to FRM installations, the proposal could increase occupational safety risks for these personnel. A large percentage of the work involved in properly inspecting and modifying airplane fuel tanks and their associated systems must be done in the interior of the tanks. Performing the necessary tasks requires inspection and maintenance personnel to physically enter the tank, where environmental hazards exist. These hazards exist in any fuel tank (regardless of whether a nitrogen inerting system is installed) and include fire and explosion, toxic and irritating chemicals, oxygen deficiency, and the confinement to the fuel tank itself. To prevent related injuries, operator and repair station maintenance organizations have developed specific procedures for identifying, controlling, or eliminating the hazards of fuel-tank entry. In addition, government agencies have adopted safety requirements for use when entering fuel tanks and other confined spaces. These same procedures would be applied to the reduced oxygen environment likely to be present in an inerted fuel tank.

Introduction of nitrogen enriched air within the fuel tanks and the possibility of nitrogen enriched air in compartments adjacent to the fuel tanks if leakage occurs creates additional risk. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flight crew. Existing certification requirements address these hazards. This proposal requires markings to emphasize the potential hazards associated with confined spaces and areas where a hazardous atmosphere could be present as a result specifically of the addition of FRM. We would require that the access doors and panels to the fuel tanks with FRMs and to any other enclosed areas that could contain hazardous atmosphere under either normal conditions or failure conditions be permanently stenciled, marked, or placarded to warn of hazards.

Fuel tanks are confined spaces [19] and contain high concentrations of fuel vapors that must be exhausted from the fuel tank before entry. Other precautions such as measurement of oxygen concentrations before entering a fuel tank are already required. Addition of the FRM that utilizes inerting may result in reduced oxygen concentrations due to leakage of the system in locations in the airplane where service personnel would not expect it. These gases may be under pressure because of the FRM design, and any hazards associated with working in adjacent spaces near the opening should be identified in the marking of the opening to the confined space.

Designs currently under consideration locate the FRM in the fairing below the center wing fuel tank. Access to these areas is obtained by opening doors or removing panels, which could allow some ventilation of the spaces adjacent to the FRM. But this may not be enough to avoid creating a hazard. Therefore, unless the design eliminates this hazard, we intend that marking be provided to warn service personnel of possible hazards associated with the reduced oxygen concentrations in the areas adjacent to the FRM. Appropriate markings would be required for all inerted fuel tanks, tanks adjacent to inerted fuel tanks and all fuel tanks communicating with the inerted tanks via plumbing. The plumbing includes, but is not limited to, plumbing for the vent system, fuel feed system, refuel system, transfer system and cross-feed system. The markings should also be stenciled on the external upper and lower surfaces of the inerted tank adjacent to any openings, to ensure maintenance personnel understand the possible contents of the fuel tank.

Advisory Circular 25.981–2 will provide additional guidance regarding markings and placards.

[19] Our worker safety requirements apply to confined spaces, which are partly or fully enclosed areas big enough for a worker to enter and perform assigned work and with limited or restricted means of entry or exit. Such areas are not designed for someone to work in regularly but for tasks such as inspection, cleaning, maintenance, and repair. (Reference U.S. Department of Labor Occupational Safety & Health Administration (OSHA), 29 CFR § 1910.146(b).) This proposal would not significantly change the procedures used by maintenance personnel to enter fuel tanks and is not intended to conflict with existing government agency requirements (e.g., OSHA).

IV. Rulemaking Analyses and Notices

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing.

- Minimum standards required in the interest of safety for the design and performance of aircraft;

• Regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and

• Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it prescribes—

• New safety standards for the design of transport category airplanes, and

• New requirements necessary for safety for the design, production, operation, and maintenance of those airplanes, and for other practices, methods and procedures relating to those airplanes.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1955 (44 U.S.C. 3507(d)), the Department of Transportation has sent the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Transport Category Airplane Fuel Tank Flammability Reduction Safety Improvements.

Summary: This proposal would require certain certificate holders to develop means to reduce the flammability of high flammability exposure fuel tanks on certain large turbine-powered transport category airplanes. In addition, this proposal requires operators of the affected airplanes with high flammability exposure fuel tanks to incorporate FRM. The current requirements for fuel tank flammability exposure for new designs would be revised to add requirements for inerting systems if inerting is used to minimize flammability exposure. This proposal also proposes to expand the coverage of part 25 to include requirements that must be complied with by current holders of these certificates. Certificate holders would be required to provide a quarterly report to the FAA that contains reliability data for the FRM. There is no specific reporting requirement for operators. Data collected by the certificate holders from operators would be obtained through normal business agreements.

Proposed subpart I would also require that TC holders submit to the FAA a plan detailing how they intend to comply with its requirements. This information would be used by the FAA to assist the TC holder in complying with requirements. The compliance plan would be necessary to ensure that TC holders fully understand the requirements, correct any deficiencies in planning in a timely manner, and are able to provide the information needed by the operators for the operators' timely compliance with the rule.

Reporting: When scheduled or unscheduled maintenance and inspections are performed, including tasks that are not identified as ALI or Certification Maintenance Requirements, the operators are only required to report specific discrepancies and corrective actions in accordance with § 121.703. This proposal would not mandate any additional reporting above the current requirements for ALI by the operators. We do not intend that operators report to the FAA the results of routine inerting system operational checks, or discrepancies found .

The proposed reporting requirement applies to applicants and holders of the affected certificates. There is no proposed additional requirement within this rulemaking for operators to report FRM reliability information. We intend for certificate holders to gather the needed data from operators using existing reporting systems that are currently used for airplane maintenance, reliability and warranty claims. The operators would provide this information through existing or new business arrangements between the certificate holders and the airlines.

Use of: This proposal would support the information needs of the FAA in approving design approval holder and operator compliance with the proposed rule.

Respondents (including number of): The likely respondents to this proposed information requirement are the affected type certificate holders such as Boeing, Airbus and several auxiliary fuel tank manufacturers.

Frequency: The proposal would require the certificate holders to submit a report to the FAA once each quarter for a period up to 5 years.

Average Annual Burden Estimate: The burden would consist of the work necessary to:

• Develop the design and the data for STCs to install fuel tank inerting systems,

• Develop and incorporate a maintenance plan into the existing maintenance programs,

• Record the results of the installation and maintenance activities.

The largest paperwork burden would be a one-time effort (spread over 3 years) associated with the STC applications. This one-time total burden would be as follows:

Documents required to show compliance with the proposed rule	One-time pages	Present value discounted cost (in millions of $2005)
Specifications for Fuel Tank STC	8,000	2.7
Manuals (Flight Manuals, Operations, and Maintenance) for Fuel Tank STC	12,000	2.7
Production for Fuel Tank STC	500	0.4
Documentation for FAA/EASA Certification	1,000	13.4
Total	21,500	19.2

The yearly burden for each of the 3 years would have a present value of about $6.4 million and involve 7,167 pages.

This proposed rulemaking would result in a minimal annual recordkeeping and reporting burden. All records that would be generated to verify the installation, to record any fuel tank system inerting failures, and to record any maintenance would use forms currently required by the FAA.

The FAA computed the annual recordkeeping (Total Pages) burden by analyzing the necessary paperwork requirements needed to satisfy each process of the proposed rulemaking.

The agency is seeking comments to—

• Evaluate whether the proposed information requirement is necessary for the proper performance of the roles of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden;

• Improve 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 using appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments to the FAA on the information collection requirement by February 21, 2006. You should send your comments to the address listed in the **ADDRESSES** section of this document.

Under the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), 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 number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Assessment, and Unfunded Mandates Assessment

Regulatory Evaluation

This portion of the preamble summarizes our analysis of the economic impacts of this NPRM. It also includes summaries of the initial regulatory flexibility determination. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, we determined this rule: (1) Is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would have a significant economic impact on a substantial number of small entities; (3) has a neutral international trade impact; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized as follows.

Total Benefits and Costs of This Rulemaking

We estimated that the proposed rule would prevent an expected 4 catastrophic passenger accidents over the analysis period. If all accidents happened in-flight, the present value total benefit would be of $490 million. The model of fuel tank flammability risk suggests an 8 percent probability that the explosion may occur on the ground. Assuming this rate of ground explosions, the present value of the total benefit would be about $460 million. This estimate is based on an average number of occupants per airplane. If the first of the prevented accidents would occur on a large passenger capacity airplane, like the Airbus A380 or TWA–800 Boeing Model 747, the quantified benefit of preventing one accident could exceed the present value costs. In addition, another fuel tank explosion would have a negative impact on public confidence in air travel safety, and, on the subsequent demand for air travel.

Table 1 displays the present value compliance costs by major element for the existing air carrier fleet and for airplanes manufactured over the next 25 years and operated over the next 50 years to be $919 million.

TABLE 1.—PRESENT VALUE COSTS OF COMPLIANCE (2006–2055)

[In millions 2005 $]

Source of cost	Present value of the compliance costs
Engineering Redesign	$64
Retrofitting Costs	377
Production Costs	133
Operational Costs	345
Total	919

Who is Potentially Affected By This Rulemaking

Boeing, Airbus, all operators flying U.S.-registered Boeing and Airbus airplanes, and holders of fuel tank supplemental type certificates (STCs).

Cost Assumptions and Sources of Information

Period of analysis is 2006–2055.

For 2008–2030, we evaluated the costs and benefits for all airplanes that would have fuel tank inerting systems. This includes airplanes that would be retrofitted between 2008 and 2015 and production airplanes manufactured between 2008 and 2030.

For 2031–2055, we evaluated the costs and benefits for all airplanes that had fuel tank inerting systems and are expected to be in service in 2030. No airplanes are added after that date. This time allows for all of the airplanes in this evaluation to complete their productive lives in U.S. aviation and be retired.

Based on Boeing's assertion that their production airplanes will have fuel tank inerting installed by 2008, we do not include Boeing production airplanes built during and after 2008 in either the cost or the benefits estimates.

- Final rule would be effective January 1, 2006.
- Discount rate is 7 percent.
- Fully burdened labor rate for an aviation engineer is $125 an hour.
- Fully burdened labor rate for an aviation mechanic is $85 an hour.
- 3,804 airplanes would be retrofitted between 2008 and 2016.
- No airplane scheduled to be retired before 2016 would be retrofitted.
- Cost of aviation fuel is $1.00 per gallon.[20]
- The type of accident that would be prevented is a catastrophic accident in

[20] The estimated cost for aviation fuel is based on both the FAA's 2005 forecast and the Department of Energy Information Administration's forecast ''Annual Energy Outlook with Projections to 2025'' (2005). Should these forecasts change prior to the publication of the final rule, if any, we will use the updated number. However, we do not expect changes in the forecast cost of aviation fuel to have a large impact on the overall cost of this rulemaking.

which all die and the airplane is destroyed.

• Special Federal Air Regulation (SFAR) 88 would prevent 50 percent of the future fuel tank explosions. (See ''History of Industry and Government Actions in Response to Fuel Tank Explosions'' in the full regulatory evaluation located within the docket file for this proposal)

• Boeing and Airbus airplanes have equal risk of an explosion.

• The explosion rate calculation does not include explosions caused by terrorist activity.

• An explosion is estimated to occur every 60 million hours of flight by heated center wing tank airplanes.

• The value of a statistical fatality averted is $3 million.

• An average of 140 passengers and crew are on a Boeing or Airbus airplane.

• The cost to investigate a catastrophic accident is $8 million.

• The average value of property loss and fatalities located on the ground is $500,000 to $1 million.

We obtained data from two Aviation Rulemaking Advisory Committee (ARAC) working groups, Boeing, and Airbus.

Finally, we request comments and information about all of our assumptions, values, and results. In particular, we request information concerning the potential cost savings from not requiring airplanes to install transient suppression devices. We also request that you provide documentation for the comments.

Estimated Benefits

We estimated the proposed rule would prevent four fuel tank explosions over the next 50 years, for a present value total benefit of $490 million.[21] The undiscounted benefits from preventing one average-sized airplane catastrophic accident are about $500 million, assuming $3 million for the value of a prevented fatality. If the value of prevented fatality is $5.5 million, the undiscounted benefits are about $890 million.

The model of fuel tank flammability risk suggests an 8 percent probability that an airplane would explode on the runway, with an average of four fatalities. Under this scenario, the average benefit would be about $60 million. Assuming an 8 percent chance on an accident while the airplane is still on the ground would reduce the total benefit, in present value, by $30 million to be about $460 million.

Costs of This Rulemaking

The undiscounted total costs for the analysis period 2006–2055 for all airplanes would be about $2.279 billion, with a present value of $919 million. The undiscounted passenger airplane costs would be about $2.018 billion with a present value of $809 million.

However, there is a potential cost reduction factor. If we enact a fuel tank flammability reduction rule, we would not require transient suppression devices and we would allow airlines that have installed them to remove them. We request information on potential cost savings from this action.

Analysis of the Proposed Rule and Alternatives, All Airplanes (2006–2055)

In all of the tables that follow, the results for the base case are found in the first row. As shown in Table 2, using a discount rate of 7 percent, $3 million for a prevented fatality, and an SFAR 88 effectiveness rate of 50 percent, the proposed rule benefits would be about $424 million less (54 percent) than the costs. Increasing the value of a prevented fatality to $5.5 million would make the benefits about 94 percent of the costs. At an SFAR effectiveness rate of 25 percent, the benefits would be 80 percent of the costs for a $3 million value of a prevented fatality, but would be 41 percent greater than the costs for a $5.5 million value of a prevented fatality.

For a 3 percent discount rate, the proposed rule benefits would be greater than the costs at an SFAR effectiveness rate of 25 percent. At 50 percent, the value of a fatality would need to be $5.5 million for the benefits to be greater than the costs—a $3 million value would result in the benefits being about three quarters of the costs.

At an SFAR 88 effectiveness rate of 75 percent, the proposed rule benefits would be less than the compliance costs under any combination of discount rate and value of a prevented fatality.

TABLE 2.—PRESENT VALUES OF THE ESTIMATED BENEFITS AND COSTS FOR ALL AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Present values		Benefit/cost ratio (percent)
			Benefits	Costs	
7	$3	50	$495	$919	54
7	5.5	50	861	919	94
7	3	25	743	919	81
7	5.5	25	1,292	919	141
7	3	75	248	919	27
7	5.5	75	431	919	47
3	3	50	1,011	1,312	77
3	5.5	50	1,774	1,312	135
3	3	25	1,517	1,312	116
3	5.5	25	2,662	1,312	203
3	3	75	506	1,312	39
3	5.5	75	888	1,312	68

Passenger Airplanes (2006–2055)

As shown in Table 3, using a discount rate of 7 percent, a $3 million value for a prevented fatality, and an SFAR 88 effectiveness rate of 50 percent, we estimated that the proposed rule benefits for passenger airplanes would be about $313 million less than the costs. Increasing the value of a prevented fatality to $5.5 million indicates the proposed rule benefits would be greater than the costs by about 6 percent for passenger airplanes. At an SFAR effectiveness rate of 25 percent,

[21] These four accidents represent the expected average. Based on the Poisson distribution and a past average of one accident every 60 million flight hours for airplanes with a heated center wing fuel tank there is a 37 percent chance that there would be 5 or more such accidents.

the proposed rule benefits would be less than the costs for a $3 million value of a prevented fatality (benefits would be 92 percent of costs), but would be greater than the costs for a $5.5 million value of a prevented fatality (benefits would be 60 percent greater than the costs) for passenger airplanes.

For a 3 percent discount rate, the proposed rule benefits for passenger airplanes would be greater than their costs at an SFAR effectiveness rate of 25 percent. At 50 percent, the value of a fatality would need to be $5.5 million for the benefits to be greater than the costs—a $3 million value would result in the benefits would be about 87 percent of the costs.

At an SFAR 88 effectiveness rate of 75 percent, the proposed rule benefits would be less than the costs for passenger airplanes under any combination of discount rate and value of a prevented fatality.

TABLE 3.—PRESENT VALUES OF THE ESTIMATED BENEFITS AND COSTS FOR ALL PASSENGER AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Present values		Benefit/cost ratio (percent)
			Benefits	Costs	
7	$3	50	$495	$808	61
7	5.5	50	861	808	106
7	3	25	743	808	92
7	5.5	25	1,292	808	160
7	3	75	248	808	31
7	5.5	75	431	808	53
3	3	50	1,011	1,157	87
3	5.5	50	1,774	1,157	153
3	3	25	1,517	1,157	131
3	5.5	25	2,662	1,157	230
3	3	75	506	1,157	44
3	5.5	75	888	1,157	77

Retrofitted Passenger Airplanes (2006–2037)

As shown in Table 4, if the SFAR 88 effectiveness rate is 75 percent, the proposed rule benefits would not be greater than the costs for retrofitted passenger airplanes under any combination of discount rate and value of a prevented fatality.

Using a discount rate of 7 percent, a $3 million value for a prevented fatality, and an SFAR 88 effectiveness rate of 50 percent, the proposed rule benefits for retrofitted passenger airplanes would be about $217 million less than the costs.

Increasing the value of a prevented fatality to $5.5 million indicates the proposed rule benefits would be greater than the costs by about 4 percent for retrofitted passenger airplanes. At an SFAR effectiveness rate of 25 percent, the proposed rule benefits would be less than the costs for a $3 million value of a prevented fatality (benefits would be 88 percent of costs), but would be greater than the costs for a $5.5 million value of a prevented fatality (benefits would be 55 percent greater than the costs) for retrofitted passenger airplanes.

For a 3 percent discount rate, the proposed rule benefits for retrofitted passenger airplanes would be greater than their costs at an SFAR effectiveness rate of 25 percent.

At 50 percent, the value of a fatality would need to be $5.5 million for the benefits to be greater than the costs—a $3 million value would result in the benefits would be about three quarters percent of the costs.

At an SFAR 88 effectiveness rate of 75 percent, the proposed rule benefits would be less than the costs for retrofitted passenger airplanes under any combination of discount rate and value of a prevented fatality.

TABLE 4.—PRESENT VALUES OF THE ESTIMATED BENEFITS AND COSTS FOR ALL RETROFITTED PASSENGER AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Present values		Benefit/cost ratio (percent)
			Benefits	Costs	
7	$3	50	$313	$530	59
7	5.5	50	549	530	104
7	3	25	469	530	88
7	5.5	25	824	530	155
7	3	75	156	530	29
7	5.5	75	275	530	52
3	3	50	557	750	74
3	5.5	50	992	750	132
3	3	25	836	750	111
3	5.5	25	1,488	750	198
3	3	75	279	750	37
3	5.5	75	496	750	66

Production Passenger Airplanes (2006–2055)

We determined that all of the retrofitted airplanes would have been retired from U.S. service by 2038. As shown in Table 5, using a discount rate of 7 percent, a $3 million value for a prevented fatality, and an SFAR 88 effectiveness rate of 50 percent, the proposed rule benefits for production passenger airplanes would be about $196 million less than the costs—about 65 percent of the costs. Increasing the value of a prevented fatality to $5.5 million indicates that the proposed rule benefits would be greater than the costs by about 12 percent for production passenger airplanes.

At an SFAR effectiveness rate of 25 percent, the proposed rule benefits for production airplanes would be greater than their costs for both combinations of discount rates and values of a prevented fatality.

At a 3 percent discount rate, the proposed rule benefits for production airplanes would be greater than their costs at an SFAR effectiveness rate of either 25 percent or 50 percent.

At an SFAR 88 effectiveness rate of 75 percent, the proposed rule benefits would be less than the costs for production passenger airplanes under any combination of discount rate and value of a prevented fatality—although they would be 96 percent of the costs if a 3 percent discount rate and a $5.5 million value of a prevented fatality were used.

TABLE 5.—PRESENT VALUES OF THE ESTIMATED BENEFITS AND COSTS FOR ALL PRODUCTION PASSENGER AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, AND SFAR 88 EFFECTIVENESS RATE

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Present values		
			Benefits	Costs	Benefit/cost ratio (percent)
7	$3	50	$182	$278	65
7	5.5	50	312	278	112
7	3	25	273	278	98
7	5.5	25	468	278	168
7	3	75	91	278	33
7	5.5	75	156	278	56
3	3	50	454	407	112
3	5.5	50	783	407	192
3	3	25	681	407	167
3	5.5	25	1,175	407	289
3	3	75	227	407	56
3	5.5	75	392	407	96

Alternative One: Apply the Proposed Rule Only to Production Airplanes—Exclude Retrofitting Requirements

As shown in Table 6, the benefit-cost ratios of the present values are lower for retrofitted airplanes than they are for production airplanes. However, at a 7 percent discount rate, the ratios are very close. Using the standard values, there is only a 6-percentage point difference (about 10 percent) between the 59 percent ratio for retrofitted passenger airplanes and the 65 percent ratio for production passenger airplanes. This same result is observed for all benefit/cost ratios calculated using a 7 percent discount rate. The difference becomes more pronounced (about 30 percent to 40 percent) when a 3 percent discount rate is used. This apparent conflict is resolved by noting that a far greater percentage of the total benefits for retrofitted airplanes would occur in the more immediate future than it would for production airplanes that have more of its benefits occurring farther out in time. Thus, a lower discount rate has a greater positive impact (relatively) on present value calculations for longer-term benefits than for shorter-term benefits. That is, retrofitted airplanes would incur the vast bulk of these airplanes flight hours and the relatively greater overall risk until about 2030.

TABLE 6.—BENEFIT-COST PRESENT VALUES RATIOS FOR PASSENGER AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, SFAR 88 EFFECTIVENESS RATE, AND TYPE OF FUEL TANK INERTING INSTALLATION

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Benefit/cost ratios		
			Retrofitted (percent)	Production (percent)	Production-retrofitted (percent)
7	$3	50	59	65	6
7	5.5	50	104	112	8
7	3	25	88	98	10
7	5.5	25	155	168	13
7	3	75	29	33	4
7	5.5	75	52	56	4
3	3	50	74	112	38
3	5.5	50	132	192	60
3	3	25	111	167	56
3	5.5	25	198	289	91
3	3	75	37	56	19

TABLE 6.—BENEFIT-COST PRESENT VALUES RATIOS FOR PASSENGER AIRPLANES BY DISCOUNT RATE, VALUE OF A PREVENTED FATALITY, SFAR 88 EFFECTIVENESS RATE, AND TYPE OF FUEL TANK INERTING INSTALLATION—Continued

[Values in million of 2005 dollars]

Discount rate (percent)	Value of fatality	SFAR 88 effectiveness (percent)	Benefit/cost ratios		
			Retrofitted (percent)	Production (percent)	Production-retrofitted (percent)
3	5.5	75	66	96	30

In light of these results, we determined that the benefit-cost analysis does not justify requiring production airplanes to have fuel tank inerting systems while not requiring these systems on retrofitted airplanes. Both airplanes need these systems.

Alternative Two: Include Cargo Airplanes in the Proposed Rule

As shown by Tables 2 and 3, including cargo airplanes in the proposed rule would have no affect on the present value of the proposed rule's quantified benefits and it would increase the cost by $111 million (a 12 percent increase). Using a discount rate of 7 percent, a $3 million value for a prevented fatality and an SFAR 88 effectiveness rate of 50 percent, the benefit-cost ratio would decrease from 61 percent to 53 percent.

Cost Benefit Summary

We believe the benefits of preventing four expected fuel tank explosions over fifty years justify the compliance cost. While our model predicts one accident every 60 million flight hours of fleet operation and a total of four prevented accidents within the analysis period, there is a nearly 40 percent probability of five or more accidents. In addition, these accidents could occur on airplanes with larger passenger capacity than the average assumed in this analysis, and they could occur sooner than we forecast. If this rule prevents two accidents comparable to the TWA accident with 230 fatalities, then preventing two of these accidents would produce estimated undiscounted benefits of $2.5 billion and would justify the undiscounted compliance cost of this proposed rule. Finally, we did not include the potential losses associated with the likely disruption to commercial aviation resulting from an in-flight explosion. Such an explosion could immediately raise a terrorism concern. In the preliminary regulatory evaluation, we estimate that the costs associated with a potential disruption could cost approximately $5 billion per accident.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

The proposed rule would require all Boeing and Airbus airplane operators, including about 18 small business operators, to retrofit their airplanes. We believe that this proposed rule would have a significant impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis, as required by the RFA, is included as part of the Initial Regulatory Analysis that is in the docket.

International Trade Impact Assessment

This proposed rule would impose the same costs on Boeing and Airbus N-registered airplanes operated by domestic entities. It would also impose costs on the airplanes and the operations of domestic entities flying internationally. However, foreign entities flying into the United States would not be affected by the proposed rule and would have a competitive advantage in competing for international business with U.S. domestic carriers. Based on the safety issues involved, we determined that these costs are acceptable to obtain the required level of air travel safety.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' We currently use an inflation-adjusted value of $120.7 million in lieu of $100 million.

We note that the rule would impose a significant private sector cost in 2014 and 2015, as the estimated undiscounted retrofitting cost would be about $110 million, which has a present value of about $70 million. Thus, this proposed rule does not contain such a mandate and the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions, as he or she

considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

We have determined that it is not a ''significant energy action'' under the executive order. The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

V. The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter 1 of Title 14, Code of Federal Regulations (CFR) parts 25, 91, 121, 125, and 129, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.1 by adding new paragraphs (c) and (d) to read as follows:

§ 25.1 Applicability.

* * * * *

(c) This part also establishes requirements for holders of type certificates, supplemental type certificates, and field approvals to take specific actions necessary to support the continued airworthiness of transport category airplanes.

(d) This part also establishes requirements for holders or licensees of type certificates for transport category airplanes to introduce design changes necessary for safety into newly produced airplanes.

3. Amend § 25.2 by adding a new paragraph (d) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(d) In addition to the requirements of this section, subpart I of this part contains requirements that apply to:

(1) Holders of type certificates, and supplemental type certificates;

(2) Applicants for type certificates, amendments to type certificates (including service bulletins describing design changes), and supplemental type certificates;

(3) [Reserved];

(4) Licensees of type certificates.

4. Amend § 25.981 by revising paragraphs (b) and (c) and adding paragraphs (d) and (e) to read as follows:

§ 25.981 Fuel tank ignition prevention.

* * * * *

(b) Except as provided in paragraph (c) of this section, no fuel tank Fleet Average Flammability Exposure level on an airplane other than one designed solely for all-cargo operations may exceed three percent, or a fuel tank within the wing of the airplane model being evaluated. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed Equivalent Conventional Unheated Aluminum Wing.

(1) Fleet Average Flammability Exposure is determined in accordance with Appendix L of this part.

(2) Any fuel tank other than a main tank on an airplane other than one designed solely for all-cargo operations must meet the flammability exposure criteria of Appendix K to this part if any portion of the tank is located within the fuselage contour.

(3) As used in this paragraph,

(i) *Equivalent Conventional Unheated Aluminum Wing* is a semi-monocoque aluminum wing of a subsonic airplane that is equivalent in aerodynamic performance, structural capability, fuel tank capacity and tank configuration to the designed wing.

(ii) *Fleet Average Flammability Exposure* is defined in Appendix L to this part and means the percentage of time the fuel tank ullage is flammable for a fleet of an airplane type operating over the range of flight lengths.

(iii) *Main Fuel Tank* means a fuel tank that feeds fuel directly into one or more engines and holds required fuel reserves continually throughout each flight.

(c) Paragraphs (b) and (e) of this section do not apply to a fuel tank if means are provided to mitigate the effects of an ignition of fuel vapors within that fuel tank such that no damage caused by an ignition will prevent continued safe flight and landing.

(d) Critical design configuration control limitations (CDCCL), inspections, or other procedures must be established, as necessary, to prevent development of ignition sources within the fuel tank system pursuant to paragraph (a) of this section, to prevent increasing the flammability exposure of the tanks above that permitted under paragraph (b) of this section, and to prevent degradation of the performance

and reliability of any means provided according to paragraphs (a), (b) or (c). These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations section of the instructions for continued airworthiness required by § 25.1529. Visible means of identifying critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration limitations (e.g., color-coding of wire to identify separation limitation). These visible means must also be identified as CDCCL.

(e) For airplanes designed solely for all-cargo operations, except as provided in paragraph (c) of this section, the fuel tank installation must include means to minimize the development of flammable vapors in the fuel tanks (in the context of this rule, ''minimize'' means to incorporate practicable design methods to reduce the likelihood of flammable vapors).

5. Amend part 25 by adding a new subpart I to read as follows:

Subpart I—Continued Airworthiness and Safety Improvements

General

Sec.
25.1801 Purpose and Scope.
25.1803 Definitions.
25.1805–25.1813 [Reserved]

Fuel Tank Flammability

25.1815 Holders of type certificates: Fuel tank flammability safety.
25.1817 Changes to type certificates affecting fuel tank flammability.
25.1819 Pending type certification projects: Fuel tank flammability safety.
25.1821 Newly produced airplanes: Fuel tank flammability safety.

Subpart I—Continued Airworthiness and Safety Improvements

General

§ 25.1801 Purpose and scope.

(a) This subpart establishes requirements for support of the continued airworthiness of and safety improvements for transport category airplanes. These requirements may include performing assessments, developing design changes, developing revisions to Instructions for Continued Airworthiness, and making necessary documentation available to affected persons.

(b) This subpart applies to the following persons, as specified in each section of this subpart:

(1) Holders of type certificates and supplemental type certificates.

(2) Applicants for type certificates and changes to type certificates (including service bulletins describing design changes). Applicants for changes to type certificates must comply with the requirements of this subpart in addition to the airworthiness requirements determined applicable under § 21.101 of this subchapter.

(3) [Reserved]

(4) Holders of type certificates and their licensees producing new airplanes.

§ 25.1803 Definitions.

(a) *Auxiliary Fuel Tank* is a Normally Emptied fuel tank that has been installed pursuant to a supplemental type certificate or field approval to make additional fuel available.

(b) *Fleet Average Flammability Exposure* has the meaning defined in Appendix L of this part.

(c) *FAA Oversight Office* is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate, supplemental type certificate, or manufacturer, as determined by the Administrator.

(d) *Normally Emptied* means a fuel tank other than a Main Fuel Tank as defined in 14 CFR 25.981(b).

§ 25.1805–25.1813 [Reserved]

Fuel Tank Flammability

§ 25.1815 Holders of type certificates: Fuel tank flammability safety.

(a) *Applicability.* Except as provided in paragraph (j) of this section, this section applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, other than those designed solely for all-cargo operations, that, as a result of original type certification or later increase in capacity have:

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *Flammability Exposure Analysis*—(1) *General.* Within 150 days after [effective date of final rule], holders of type certificates must submit for approval to the FAA Oversight Office a flammability exposure analysis of all fuel tanks defined in the type design, as well as all design variations approved under the type certificate that affect flammability exposure. This analysis must be conducted in accordance with appendix L of this part.

(2) *Exception.* This paragraph does not apply to fuel tanks for which the type certificate holder has notified the FAA under paragraph (g) of this section that it will provide design changes and service instructions for an Ignition Mitigation Means (IMM) meeting the requirements of paragraph (c)(2) of this section.

(c) *Design modifications.* For fuel tanks with a Fleet Average Flammability Exposure level exceeding 7 percent, one of the following design modifications must be made.

(1) *Flammability Reduction Means (FRM).* A means must be provided to reduce the fuel tank flammability.

(i) Fuel tanks that are designed to be Normally Emptied must meet the flammability exposure criteria of Appendix K of this part if any portion of the tank is located within the fuselage contour.

(ii) For all other fuel tanks, the FRM must meet all of the requirements of Appendix K of this part, except, instead of complying with paragraph K25.1, the Fleet Average Flammability Exposure level must not exceed 7 percent.

(2) *IMM.* A means must be provided to mitigate the effects of an ignition of fuel vapors within the fuel tank such that no damage caused by an ignition will prevent continued safe flight and landing.

(d) *Design Changes and Service Instructions.* No later than the applicable date stated in Table 1 of this section, holders of type certificates affected by this section must meet one of the following requirements:

(1) *FRM.* The type certificate holder must submit for approval by the FAA Oversight Office design changes and service instructions for installation of fuel tank flammability reduction means (FRM) meeting the criteria of paragraph (c) of this section.

(2) *IMM.* The type certificate holder must submit for approval by the FAA Oversight Office design changes and service instructions for installation of fuel tank IMM that comply with 14 CFR 25.981(c) in effect on [effective date of final rule].

TABLE 1

Model—	Service instruction submittal date
Boeing	
747 Series	December 31, 2005.
737 Series	March 31, 2006.
777 Series	March 31, 2006.
767 Series	September 30, 2006.
757 Series	March 31, 2007.
707/720 Series	December 31, 2007.
Airbus	
A319, A320, A321 Series.	December 31, 2006.
A300, A310 Series	June 30, 2007.
A330, A340 Series	December 31, 2007.
All other affected models.	Within 24 months of effective date of this amendment.

(e) *Instructions for Continued Airworthiness (ICA).* For all fuel tanks, regardless of flammability exposure, no later than the applicable date specified in Table 1 of this section, holders of type certificates affected by this section must submit for approval by the FAA Oversight Office, critical design configuration control limitations (CDCCL), inspections, or other procedures to prevent increasing the flammability exposure of the tanks above that permitted under this section and to prevent degradation of the performance of any means provided under paragraph (c)(1) or (c)(2) of this section. These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations section of the ICA required by 14 CFR 25.1529 or paragraph (f) of this section. Visible means to identify critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration limitations. These visible means must also be identified as a CDCCL.

(f) *Airworthiness Limitations.* Unless previously accomplished, no later than the applicable date specified in Table 1 of this section, holders of type certificates affected by this section must establish an Airworthiness Limitations Section (ALS) of the maintenance manual or ICA for each airplane configuration evaluated under paragraph (b)(1) and submit it to the FAA oversight office for approval. The ALS must include a section that contains the (CDCCL), inspections, or other procedures developed under paragraph (e) of this section.

(g) *Compliance Plan for Flammability Exposure Analysis.* Within 60 days after [effective date of final rule], each holder of a type certificate identified in paragraph (a) of this section must submit to the FAA Oversight Office a compliance plan consisting of the following:

(1) A proposed project schedule for submitting the required analysis, or a determination that compliance with paragraph (b) of this section is not required as design changes and service instructions for IMM will be made available.

(2) A proposed means of compliance with paragraph (b) of this section, if applicable.

(3) If the affected holder proposes a means of compliance that differs from that described in FAA advisory material, a detailed explanation of how the proposed means will comply with this section.

(h) *Compliance Plan for Design Changes and Service Instructions.* Within 210 days after [effective date of final rule], each holder of a type certificate required to comply with paragraph (d) of this section must submit to the FAA Oversight Office a compliance plan consisting of the following:

(1) A proposed project schedule, identifying all major milestones, for meeting the compliance dates specified in paragraph (d) of this section.

(2) A proposed means of compliance with paragraph (d) of this section.

(3) If the affected holder proposes a means of compliance that differs from that described in FAA advisory material, a detailed explanation of how the proposed means will comply with this section.

(4) A proposal for submitting a draft of all compliance items required by paragraph (d) of this section for review by the FAA Oversight Office not less than 60 days before the compliance time specified in paragraph (d) of this section.

(5) A proposal for how the approved service information and any necessary modification parts will be made available to affected persons.

(i) *Deficiencies in Compliance Plans.* Each affected type certificate holder must implement the compliance plans as approved under paragraph (g) and (h) of this section. The FAA Oversight Office will notify the affected holder of deficiencies in the proposed compliance plan, or in the type certificate holder's implementation of the plan, and provide the means for correcting those deficiencies. The type certificate holder must submit a corrected plan to the FAA Oversight Office within 30 days after such notification and implement the corrected plan.

(j) *Exceptions.* The requirements of this section do not apply to the following airplane models:

(1) Convair CV–240, 340, 440, including turbine powered conversions.

(2) Lockheed L–188.

(3) Vickers Armstrong Viscount.

(4) Douglas DC–3, including turbine powered conversions.

(5) Bombardier CL–44.

(6) Mitsubishi YS–11.

(7) BAC 1–11.

(8) Concorde.

(9) deHavilland D.H. 106 Comet 4C.

(10) VFW-Vereinigte Flugtechnische VFW–614.

(11) Illyushin Aviation IL 96T.

(12) Bristol Aircraft Britannia 305.

(13) Handley Page Handley Page Herald Type 300.

(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C.

(15) Airbus Caravelle.

(16) Fokker F27.

(17) Maryland Air Service V–27/FH–227.

§ 25.1817 Changes to type certificates affecting fuel tank flammability.

(a) *Applicability.* This section applies to the following design changes to any airplane subject to 14 CFR 25.1815(a) unless the design change converts the airplane to one designed solely for all-cargo operations:

(1) Any fuel tank designed to be Normally Emptied if any of the following occurred before [effective date of final rule]:

(i) The fuel tank was installed on an airplane pursuant to a supplemental type certificate or a field approval;

(ii) An application for a supplemental type certificate or an amendment to a type certificate was made, or

(iii) A field approval was granted.

(2) Installation of a fuel tank designed to be Normally Emptied, including Auxiliary Fuel Tanks, changes to existing fuel tank capacity, and changes that may increase the flammability exposure of an existing fuel tank on airplanes for which an application for a supplemental type certificate or an amendment to a type certificate is made on or after [effective date of final rule].

(b) *Flammability Exposure Analysis*—(1) *General.* By the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, each person subject to this section must submit for approval to the FAA Oversight Office a flammability exposure analysis of the Auxiliary Fuel Tanks or other affected fuel tanks, as defined in the type design. This analysis must be conducted in accordance with appendix L of this part.

(i) Holders of supplemental type certificates and field approvals: Within 12 months of [effective date of final rule],

(ii) Applicants for supplemental type certificates and for amendments to type certificates: Within 12 months of [effective date of final rule], or before the certificate is issued, whichever occurs later.

(2) *Exception.* This paragraph does not apply to fuel tanks for which the type certificate holder, supplemental type certificate holder, and field approval holder has notified the FAA under paragraph (f) of this section that it will provide design changes and service instructions for an IMM meeting the requirements of § 25.981(c) of this part in effect on [effective date of final rule].

(c) *Impact Assessment.* By the times specified in paragraphs (c)(1) and (c)(2) of this section, each person subject to

this section must submit for approval to the FAA Oversight Office an assessment of the fuel tank system, as modified by their design change. The assessment must identify any features of the design change that compromise any critical design configuration control limitation (CDCCL) applicable to any airplane on which the design change is eligible for installation.

(1) Holders of supplemental type certificates and field approvals: Within 6 months of the date of FAA approval of the submission identified in § 25.1815(d) for the applicable airplane model.

(2) Applicants for supplemental type certificates and for amendments to type certificates: Within 6 months of the date of FAA approval of the submission identified in 14 CFR 25.1815(d) for the applicable airplane model or before the certificate is issued, whichever occurs later.

(d) *Design Changes and Service Instructions.* By the times specified in paragraph (e) of this section, each person subject to this section must meet the requirements of paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section, as applicable.

(1) If the application was submitted before June 6, 2001, for any fuel tank exceeding a Fleet Average Flammability Exposure level of 7 percent, submit for approval by the FAA oversight office design changes and service instructions for installation of either:

(i) *IMM.* Fuel tank IMM that comply with 14 CFR 25.981(c) of this part in effect on [effective date of final rule]; or

(ii) *FRM.* Any fuel tank that is designed to be Normally Emptied, including Auxiliary Fuel tanks, must meet the flammability exposure criteria of Appendix K if any portion of the tank is located within the fuselage contour. For all other fuel tanks, the FRM must meet all of the requirements of Appendix K of this part, except, instead of complying with paragraph K25.1, the Fleet Average Flammability Exposure level must not exceed 7 percent.

(2) If the application was made on or after June 6, 2001, comply with the requirements of 14 CFR 25.981, in effect on [effective date of final rule], for all fuel tanks subject to this section.

(3) For design changes adding a fuel tank designed to be Normally Emptied, including Auxiliary Fuel Tanks, or changing fuel tank capacity, establish critical design configuration control limitations (CDCCL), inspections, or other procedures to prevent increasing the flammability exposure of the tanks above that permitted under this section and to prevent degradation of the performance of any means provided according to paragraphs (d)(1)(i) or (d)(1)(ii) of this section. These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations section of the ICA required by 14 CFR 25.1529 of this part. Visible means to identify critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration limitations. These visible means must also be identified as CDCCL.

(4) If the assessment required by paragraph (c) of this section identifies any features of the design change that compromise any CDCCL applicable to any airplane on which the design change is eligible for installation, the holder or applicant must submit for approval by the FAA Oversight Office design changes and service instructions for Flammability Impact Mitigation Means (FIMM) that would bring the design change into compliance with the CDCCL. Any fuel tank modified as required by this paragraph must also be evaluated as required by paragraph (b) of this section and comply with paragraphs (d)(1), (d)(2), and (d)(3) of this section, as applicable.

(e) *Compliance Times for Design Changes and Service Instructions.* The following persons subject to this section must comply with the requirements of paragraph (d) of this section at the specified times.

(1) Holders of supplemental type certificates and field approvals: Within 24 months of the date identified in 14 CFR 25.1815(d) for the applicable airplane model.

(2) Applicants for supplemental type certificates and for amendments to type certificates: Within 24 months of the date identified in 14 CFR 25.1815(d) for the applicable airplane model or before the certificate is issued, whichever occurs later.

(f) *Compliance Planning.* By the applicable times specified in Table 2 of this section, each person subject to this section must submit for approval by the FAA Oversight Office compliance plans for the flammability exposure analysis required by paragraph (b) of this section, the impact assessment required by paragraph (c) of this section, and the design changes and service instructions required by paragraph (d) of this section. Each person's compliance plans must include the following:

(1) A proposed project schedule for submitting the required analysis or impact assessment.

(2) A proposed means of compliance with paragraph (d) of this section.

(3) If the affected holder proposes a means of compliance that differs from that described in FAA advisory material, a detailed explanation of how the proposed means will be shown to comply with this section.

(4) For the requirements of paragraph (d) of this section, a proposal for submitting a draft of all design changes, if any are required, and CDCCLs for review by the FAA Oversight Office not less than 60 days before the compliance time specified in paragraph (e) of this section.

(5) For the requirements of paragraph (d) of this section, a proposal for how the approved service information and any necessary modification parts will be made available to affected persons.

TABLE 2.—COMPLIANCE PLANNING DATES

	Flammability exposure analysis plan	Impact assessment plan	Design changes and service instructions plan
STC and Field Approval Holders ...	60 days after [effective date of final rule].	60 days after the date identified in § 25.1815(d) for the applicable airplane model.	240 days after the date identified in § 25.1815(d) for the applicable airplane model.
STC and ATC Applicants	60 days after [effective date of final rule] or before the certificate is issued, whichever occurs later.	60 days after the date identified in § 25.1815(d) for the applicable airplane model or before the certificate is issued, whichever occurs later.	240 days after the date identified in § 25.1815(d) for the applicable airplane model or before the certificate is issued, whichever occurs later.

(g) *Deficiencies in Compliance Plans.* Each person subject to this section must implement the compliance plans as approved under paragraph (f) of this section. The FAA Oversight Office will notify the affected person of deficiencies in the proposed compliance plan, or in the person's implementation of the plan, and of the means for correcting those deficiencies. The person must submit a corrected plan to the FAA oversight office within 30 days after such notification, and implement the corrected plan.

§ 25.1819 Pending type certification projects: Fuel tank flammability safety.

(a) *Applicability.* This section applies to any new type certificate for a transport category airplane, other than one designed solely for all-cargo operations, if the application was made before [effective date of final rule and if the certificate was not issued before [effective date of final rule]. This section applies only if the airplane would have—

(1) A maximum type-certificated passenger capacity of 30 or more, or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *Flammability Exposure Analysis.* Before issuance of the type certificate, the applicant must submit for approval to the FAA Oversight Office a flammability exposure analysis of all fuel tanks defined in the type design. This analysis must be conducted in accordance with Appendix L of this part.

(c) If the application was made before June 6, 2001, the requirements of paragraphs (c)(1) and (c)(2) of this section apply.

(1) Any fuel tank meeting all of the criteria stated in paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii) of this section must have FRM or IMM that meet the requirements of 14 CFR 25.981 of this part in effect on [effective date of final rule].

(i) The fuel tank is a fuel tank designed to be Normally Emptied.

(ii) Any portion of the fuel tank is located within the fuselage contour.

(iii) The fuel tank exceeds a Fleet Average Flammability Exposure level of this part, of 7 percent.

(2) All other fuel tanks that exceed a Fleet Average Flammability Exposure level of 7 percent must have either an IMM meeting 14 CFR 25.981(c) of this part in effect on [effective date of final rule] or an FRM meeting the requirements of Appendix K of this part, except, instead of complying with paragraph K25.1, the Fleet Average Flammability Exposure level must not exceed 7 percent.

(d) If the application was made on or after June 6, 2001, the requirements of 14 CFR 25.981 in effect on [effective date of final rule] apply.

(e) Any design change to a type certificate subject to this section that adds an Auxiliary Fuel Tank or fuel tank designed to be Normally Emptied, that increases fuel tank capacity, or that may increase the flammability exposure of an existing fuel tank, must meet the requirements of 14 CFR 25.981 in effect on [effective date of final rule].

(f) For all fuel tanks, regardless of flammability exposure, no later than the applicable date specified in Table 1 of this subpart, holders of type certificates affected by this section must submit for approval by the FAA Oversight Office, critical design configuration control limitations (CDCCL), inspections, or other procedures to prevent increasing the flammability exposure of the tanks above that permitted under paragraph (c) or (d) of this section and to prevent degradation of the performance of any means provided under paragraph (c) or (d) of this section. These CDCCL, inspections, and procedures must be included in the Airworthiness Limitations section of the ICA required by 14 CFR 25.1529. Visible means to identify critical features of the design must be placed in areas of the airplane where foreseeable maintenance actions, repairs, or alterations may compromise the critical design configuration limitations. These visible means must also be identified as CDCCL.

§ 25.1821 Newly produced airplanes: Fuel tank flammability safety.

(a) *Applicability:* This section applies to holders of type certificates for airplanes, other than those designed or produced solely for all-cargo operations, subject to 14 CFR 25.1815(c) of this part when application is made for original certificates of airworthiness or export airworthiness approvals after the applicable dates shown in 14 CFR 25.1815(d) of this part. This section only applies if the FAA has jurisdiction over the organization responsible for final assembly of the airplane.

(b) Any fuel tank meeting all of the criteria stated in paragraphs (b)(1), (b)(2) and (b)(3) of this section must have flammability reduction means (FRM) or ignition mitigation means (IMM) that meet the requirements of 14 CFR 25.981 in effect on [effective date of final rule].

(1) The fuel tank is Normally Emptied.

(2) Any portion of the fuel tank is located within the fuselage contour.

(3) The fuel tank exceeds a Fleet Average Flammability Exposure level of 7 percent.

(c) All other fuel tanks that exceed an Fleet Average Flammability Exposure level of 7 percent must have an IMM that meets 14 CFR 25.981(c) in effect on [effective date of final rule] or an FRM that meets all of the requirements of Appendix K to this part, except instead of complying with paragraph K25.1, the Fleet Average Flammability Exposure level must not exceed 7 percent.

6. Part 25 is amended by adding a new appendix K to read as follows:

Appendix K to Part 25—Fuel Tank System Flammability Reduction Means

K25.1 Fuel tank flammability exposure requirements

(a) The Fleet Average Flammability Exposure level of each fuel tank, as determined in accordance with Appendix L of this part, must not exceed 3 percent of the Flammability Exposure Evaluation Time (FEET), as defined in Appendix L of this part. If flammability reduction means (FRM) are used, neither time periods when any FRM is operational but the fuel tank is not inert, nor time periods when any FRM is inoperative may contribute more than 1.8 percent to the 3 percent average fleet flammability exposure of a tank.

(b) The Fleet Average Flammability Exposure, as defined in Appendix L of this part, of each fuel tank for ground, takeoff and climb phases of flight during warm days must not exceed 3 percent of FEET in each of these phases. The analysis must consider the following conditions.

(1) The analysis must use the subset of flights starting with a sea level ground ambient temperature of 80°F (standard day plus 21°F atmosphere) or more, from the flammability exposure analysis done for overall performance.

(2) For the ground, takeoff, and climb phases of flight, the average flammability exposure must be calculated by dividing the time during the specific flight phase the fuel tank is flammable by the total time of the specific flight phase.

(3) Compliance with this paragraph may be shown using only those flights for which the airplane is dispatched with the flammability reduction means operational.

K25.2 Showing compliance

(a) The applicant must provide data from analysis, ground testing, and flight testing, or any combination of these, that:

(1) Validate the parameters used in the analysis required by paragraph K25.1;

(2) Substantiate that the FRM is effective at limiting flammability exposure in all compartments of each tank for which the FRM is used to show compliance with paragraph K25.1; and

(3) Describe the circumstances under which the FRM would not be operated during each phase of flight.

(b) The applicant must validate that the FRM meets the requirements of paragraph K25.1 with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration for which approval is sought.

K25.3 Reliability indications and maintenance access

(a) Reliability indications must be provided to identify latent failures of the FRM.

(b) Sufficient accessibility to FRM reliability indications must be provided for maintenance personnel or the flightcrew.

(c) The access doors and panels to the fuel tanks with FRMs (including any tanks that communicate with a tank via a vent system), and to any other confined spaces or enclosed areas that could contain hazardous atmosphere under normal conditions or failure conditions must be permanently stenciled, marked, or placarded to warn maintenance personnel of the possible presence of a potentially hazardous atmosphere.

K25.4 Airworthiness limitations and procedures

(a) If FRM is used to comply with paragraph K25.1, Airworthiness Limitations must be identified for all maintenance or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraph K25.1.

(b) Maintenance procedures must be developed to identify any hazards to be considered during maintenance of the FRM. These procedures must be included in the instructions for continued airworthiness (ICA).

K25.5 Reliability reporting

The effects of airplane component failures on FRM reliability must be assessed on an on-going basis. The applicant must do the following:

(a) Demonstrate effective means to ensure collection of FRM reliability data. The means must provide data affecting FRM reliability, such as component failures.

(b) Provide a report to the FAA on a quarterly basis for the first five years after service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRM meets, and will continue to meet, the exposure requirements of paragraph K25.1.

(c) Develop service instructions or revise the applicable airplane manual, according to a schedule approved by the FAA Oversight Office, as defined in Subpart I of this part, to correct any failures of the FRM that occur in service that could increase any fuel tank's Fleet Average Flammability Exposure to more than that required by paragraph K25.1.

7. Part 25 is amended by adding a new appendix L to read as follows:

Appendix L to Part 25—Fuel Tank Flammability Exposure and Reliability Analysis

L25.1 General

(a) This appendix specifies the requirements for conducting fuel tank fleet average flammability exposure analyses required to meet § 25.981(b) and Appendix K of this part. This appendix defines parameters affecting fuel tank flammability that must be used in performing the analysis. These include parameters that affect all airplanes within the fleet, such as a statistical distribution of ambient temperature, fuel flash point, flight lengths, and airplane descent rate. Demonstration of compliance also requires application of factors specific to the airplane model being evaluated. Factors that need to be included are maximum range, cruise mach number, typical altitude where the airplane begins initial cruise phase of flight fuel temperature during both ground and flight times, and the performance of a flammability reduction means (FRM) if installed.

(b) The FAA program defined in FAA document, Fuel Tank Flammability Assessment Method Users Manual, must be used as the means of compliance with § 25.981(b) and appendix K. [You must proceed in accordance with FAA document, Fuel Tank Flammability Assessment Method Users Manual. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the following Web site: *http://www.fire.tc.faa.gov/systems/fueltank/FTFAM.stm*_. You may inspect a copy at the Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The following definitions, input variables, and data tables must be used in the program to determine fleet average flammability exposure for a specific airplane model.

L25.2 Definitions

(a) *Bulk Average Fuel Temperature* means the average fuel temperature within the fuel tank or different sections of the tank if the tank is subdivided by baffles or compartments.

(b) *Flammability Exposure Evaluation Time (FEET).* The time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded, and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Flight Length Distribution (Table 3), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

(c) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR Part 1, Definitions). A non-flammable ullage is one where the fuel-air vapor is too lean or too rich to burn or is inert as defined below. For the purposes of this appendix, a fuel tank that is not inert is considered flammable when the bulk average fuel temperature within the tank is within the flammable range for the fuel type being used. For any fuel tank that is subdivided into sections by baffles or compartments, the tank is considered flammable when the bulk average fuel temperature within any section of the tank, that is not inert, is within the flammable range for the fuel type being used.

(d) *Flash Point.* The flash point of a flammable fluid means the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' Table 1 of this appendix provides the flash point for the standard fuel to be used in the analysis.

(e) *Fleet average flammability exposure* is the percentage of the flammability exposure evaluation time (FEET) the fuel tank ullage is flammable for a fleet of an airplane type operating over the range of flight lengths in a world-wide range of environmental conditions and fuel properties as defined in this appendix.

(f) *Gaussian Distribution* is another name for the normal distribution, a symmetrical frequency distribution having a precise mathematical formula relating the mean and standard deviation of the samples. Gaussian distributions yield bell shaped frequency curves having a preponderance of values around the mean with progressively fewer observations as the curve extends outward.

(g) *Hazardous atmosphere.* An atmosphere that may expose maintenance personnel, passengers or flight crew to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a confined space), injury, or acute illness.

(h) *Inert.* For the purpose of this appendix, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less from sea level up to 10,000 feet altitude, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet altitude, and extrapolated linearly above that altitude.

(i) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank so that the ullage becomes non-flammable.

(j) *Monte Carlo Analysis.* The analytical method that is specified in this appendix as the compliance means for assessing the fleet average flammability exposure time for a fuel tank.

(k) *Standard deviation* is a statistical measure of the dispersion or variation in a distribution, equal to the square root of the arithmetic mean of the squares of the deviations from the arithmetic means.

(l) *Transport Effects.* For purposes of this appendix, transport effects are the change in fuel vapor concentration in a fuel tank caused by low fuel conditions and fuel condensation and vaporization.

(m) *Ullage.* The volume within the fuel tank not occupied by liquid fuel.

L25.3 Fuel tank flammability exposure analysis

(a) A flammability exposure analysis must be conducted for the fuel tank under evaluation to determine fleet average flammability exposure for the airplane and fuel types under evaluation. For fuel tanks that are subdivided by baffles or compartments, an analysis must be performed either for each section of the tank, or for the section of the tank having the highest flammability exposure. Consideration of transport effects is not allowed in the analysis. The Monte Carlo program is contained in FAA document, Fuel Tank Flammability Assessment Method Users Manual. The parameters specified in sections L25.3(b) and (c) must be used in the fuel tank flammability exposure ''Monte Carlo'' analysis.

(b) The following parameters are defined in the Monte Carlo analysis and provided in paragraph L25.4:

(1) Cruise Ambient Temperature—as defined in this appendix.

(2) Ground Temperature—as defined in this appendix.

(3) Fuel Flash Point—as defined in this appendix.

(4) Flight Length Distribution—that must be used is defined in Table 2 of this appendix.

(5) Airplane Climb and Descent Profiles—the applicant must use the climb and descent profiles defined in the users manual.

(c) Parameters that are specific to the particular airplane model under evaluation that must be provided as inputs to the Monte Carlo analysis are:

(1) Airplane Cruise Altitude.

(2) Fuel Tank Quantities. If fuel quantity affects fuel tank flammability, inputs to the Monte Carlo analysis must be provided that represent the actual fuel quantity within the fuel tank or compartment of the fuel tank throughout each of the flights being evaluated. Input values for this data must be obtained from ground and flight test data or the approved FAA fuel management procedures.

(3) Airplane Cruise Mach Number.

(4) Airplane Maximum Range.

(5) Fuel Tank Thermal Characteristics. If fuel temperature affects fuel tank flammability, inputs to the Monte Carlo analysis must be provided that represent the actual bulk average fuel temperature within the fuel tank throughout each of the flights being evaluated. For fuel tanks that are subdivided by baffles or compartments, bulk average fuel temperature inputs must be provided either for each section of the tank or for the section of the tank having the highest flammability exposure. Input values for these data must be obtained from ground and flight test data or a thermal model of the tank that has been validated by ground and flight test data.

(6) Maximum airplane operating temperature limit as defined by any limitations in the airplane flight manual.

(d) Fuel Tank FRM Model. If FRM is used, an FAA approved Monte Carlo program must be used to show compliance with the flammability requirements of § 25.981 and Appendix K of this part. The program must determine the time periods during each flight phase when the fuel tank or compartment with the FRM would be flammable. The following factors must be considered in establishing these time periods:

(1) Any time periods throughout the flammability exposure evaluation time and under the full range of expected operating conditions, when the FRM is operating properly but fails to maintain a non-flammable fuel tank because of the effects of the fuel tank vent system or other causes,

(2) If dispatch with the system inoperative under the Master Minimum Equipment List (MMEL) is requested, the time period assumed in the reliability analysis, (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the Administrator),

(3) Frequency and duration of time periods of FRM inoperability, substantiated by test or analysis acceptable to the FAA, caused by latent or known failures, including airplane system shut-downs and failures that could cause the FRM to shut down or become inoperative,

(4) Effects of failures of the FRM that could increase the flammability exposure of the fuel tank,

(5) Oxygen Evolution: If an FRM is used that is affected by oxygen concentrations in the fuel tank, the time periods when oxygen evolution from the fuel results in the fuel tank or compartment exceeding the inert level. The applicant must include any times when oxygen evolution from the fuel in the tank or compartment under evaluation would result in a flammable fuel tank. The oxygen evolution rate that must be used is defined in the user's manual.

(6) If an inerting system FRM is used, the effects of any air that may enter the fuel tank following the last flight of the day due to changes in ambient temperature, as defined in Table 4, during a 12-hour overnight period.

(e) The applicant must submit to the FAA oversight office for approval the fuel tank flammability analysis, including the airplane-specific parameters identified under paragraph L25.3(c) of this appendix and any deviations from the parameters identified in paragraph L25.3(b), that affect flammability exposure, substantiating data, and any airworthiness limitations and other conditions assumed in the analysis, must be submitted.

L25.4 Variables and data tables

The following data must be used when conducting a flammability exposure analysis to determine the fleet average flammability exposure. Variables used to calculate fleet flammability exposure must include atmospheric ambient temperatures, flight length, flammability exposure evaluation time, fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage.

(a) Atmospheric Ambient Temperatures and Fuel Properties.

(1) In order to predict flammability exposure during a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise ambient temperatures and the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1-standard deviation value.

(2) Ambient Temperature: Under the program, the ground and cruise ambient temperatures are linked by a set of assumptions on the atmosphere. The temperature varies with altitude following the International Standard Atmosphere (ISA) rate of change from the ground ambient temperature until the cruise temperature for the flight is reached. Above this altitude, the ambient temperature is fixed at the cruise ambient temperature. This results in a variation in the upper atmospheric temperature. For cold days, an inversion is applied up to 10,000 feet, and then the ISA rate of change is used.

(3) Fuel properties:

(A) For Jet A fuel, the variation of flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1-standard deviation, as shown in Table 1.

(B) The flammability envelope of the fuel that must be used for the flammability exposure analysis is a function of the flash point of the fuel selected by the Monte Carlo for a given flight. The flammability envelope for the fuel is defined by the upper flammability limit (UFL) and lower flammability limit (LFL) as follows:

(i) LFL at sea level = flash point temperature of the fuel at sea level minus 10 °F. LFL decreases from sea level value with increasing altitude at a rate of 1 °F per 808 feet.

(ii) UFL at sea level = flash point temperature of the fuel at sea level plus 63.5 °F. UFL decreases from the sea level value with increasing altitude at a rate of 1 °F per 512 feet.

(4) For each flight analyzed, a separate random number must be generated for each of the three parameters (ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT TEMPERATURE, CRUISE AMBIENT TEMPERATURE, AND FUEL FLASH POINT

Parameter	Temperature in deg F		
	Ground ambient temperature	Cruise ambient temperature	Fuel flash point (FP)
Mean Temp	59.95	−70	120
Neg 1 std dev	20.14	8	8
Pos 1 std dev	17.28	8	8

(b) The Flight Length Distribution defined in Table 2 must be used in the Monte Carlo analysis.

TABLE 2.—FLIGHT LENGTH DISTRIBUTION

Flight length (NM)		Airplane maximum range—nautical miles (NM)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
		Distribution of flight lengths (percentage of total)									
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

(c) Overnight Temperature Drop. For airplanes on which FRM is installed, the overnight temperature drop for this appendix is defined using:

(1) A temperature at the beginning of the overnight period that equals the landing temperature of the previous flight that is a random value based on a Gaussian distribution; and

(2) An overnight temperature drop that is a random value based on a Gaussian distribution.

(3) For any flight that will end with an overnight ground period (one flight per day out of an average of number of flights per day, depending on utilization of the particular airplane model being evaluated), the landing outside air temperature (OAT) is

to be chosen as a random value from the following Gaussian curve:

TABLE 3.—LANDING OUTSIDE AIR TEMPERATURE

Parameter	Landing outside air temperature °F
Mean Temperature	58.68
negative 1 std dev	20.55
positive 1 std dev	13.21

(4) The outside ambient air temperature (OAT) overnight temperature drop is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—OUTSIDE AIR TEMPERATURE (OAT) DROP

Parameter	OAT drop temperature °F
Mean Temp	12.0
1 std dev	6.0

(d) Number of Simulated Flights Required in Analysis. In order for the Monte Carlo analysis to be valid for showing compliance with the fleet average and warm day flammability exposure requirements, the applicant must run the analysis for a minimum number of flights to ensure that the fleet average and warm day flammability exposure for the fuel tank under evaluation meets the applicable flammability limits defined in Table 5.

TABLE 5.—FLAMMABILITY EXPOSURE LIMIT

Minimum number of flights in Monte Carlo analysis	Maximum acceptable Monte Carlo average fuel tank flammability exposure (%) to meet 3% requirements	Maximum acceptable Monte Carlo average fuel tank flammability exposure (%) to meet 7% requirements
10,000	2.91	6.79
100,000	2.98	6.96
1,000,000	3.00	7.00

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44715, 44716, 11417, 44722, 46306, 36315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 20 of the Convention on International Civil Aviation (61 stat. 1180).

9. Amend § 91.1 by adding a new paragraph (d) to read as follows:

§ 91.1 Applicability.

* * * * *

(d) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

10. Amend part 91 by adding a new subpart L to read as follows:

Subpart L—Continued Airworthiness and Safety Improvements

Sec.
91.1501 Purpose and definition.
91.1503–91.1507 [Reserved]
91.1509 Flammability reduction means.

Subpart L—Continued Airworthiness and Safety Improvements

§ 91.1501 Purpose and definition.

(a) This subpart establishes requirements for operators to take actions necessary to support the continued airworthiness of each airplane. Such actions may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness (ICA).

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§§ 91.1503–91.1507 [Reserved]

§ 91.1509 Flammability reduction means.

(a) *Applicability.* This section applies to persons operating transport category, turbine-powered airplanes for which development of an ignition mitigation means (IMM), flammability reduction means (FRM), or Flammability Impact Mitigation Means (FIMM) is required under §§ 25.1815, 25.1817, or 25.1819 of this chapter.

(b) *New Production Airplanes.* Except in accordance with § 91.213 of this part, no person may operate an airplane on which IMM or FRM has been installed by the type certificate holder or licensee under 14 CFR 25.1821 unless the IMM or FRM is operational.

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraphs (e)(1) and (e)(2), no person may operate any airplane subject to this section that has an Auxiliary fuel tank installed pursuant to a field approval, unless the following requirements are met:

(1) The person complies with 14 CFR 25.1817 by the applicable date stated in that section.

(2) The person installs IMM, FRM, or FIMM, as applicable, that is approved by the FAA Oversight Office.

(3) Except in accordance with § 91.213 of this part, the IMM, FRM, or FIMM, as applicable, are operational.

(d) *Retrofit.* After the dates specified in paragraph (e) of this section, no person may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM, and FIMM, if required by §§ 25.1815, 25.1817, or 25.1819 of this chapter, that are approved by the FAA Oversight Office, are installed in at least the percentage of the operator's fleet of each airplane model indicated in the applicable column of Table 1 of this section.

(2) Except in accordance with § 91.213 of this part, the IMM, FRM, and FIMM, as applicable, are operational.

(e) *Compliance Times.* The installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1) or (e)(2) of this section.

(1) The applicable dates specified in Table 1.

TABLE 1

Model	Compliance date for 50% of fleet	Compliance date for 100% of fleet
Boeing		
747 Series	December 31, 2009	December 31, 2012.
737 Series	March 31, 2010	March 31, 2013.
777 Series	March 31, 2010	March 31, 2013.
767 Series	September 30, 2010	September 30, 2013.
757 Series	March 31, 2011	March 31, 2014.
707/720 Series	December 31, 2011	December 31, 2014.
Airbus		
A319, A320, A321 Series	December 31, 2010	December 31, 2013.
A300, A310 Series	June 30, 2011	June 30, 2014.
A330, A340 Series	December 31, 2011	December 31, 2014.
All other affected models	Within 4 years after the effective date of this amendment.	Within 7 years after the effective date of this amendment.

(2) For those persons that have only one airplane of a model identified in Table 1, the compliance date is that stated for 100% of Fleet in Table 1 of this section.

(f) *Early Compliance.* Notwithstanding paragraphs (c) and (d) of this section, no person may operate an airplane on which IMM, FRM or FIMM has been installed unless the IMM, FRM or FIMM is operational, except in accordance with § 91.213 of this part.

(g) *Inspection Program Revisions.* No person may operate an airplane to which this section applies after the date specified in paragraph (g)(1) or (g)(2) of this section, as applicable, unless the inspection program for that airplane is revised to include applicable airworthiness limitations that are approved by the FAA Oversight Office under §§ 25.1815, 25.1817 or 25.1819 of this chapter.

(1) For any airplane that must be modified in accordance with paragraph (d) of this section, the date of return to service after those modifications are accomplished.

(2) For any airplane that is not required to be modified in accordance with paragraph (d) of this section, the date one year after the date of approval of the airworthiness limitations by the FAA Oversight Office.

(h) After the inspection program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.1817, or 25.1819 of this chapter, the person must revise the inspection program for the airplane to include those airworthiness limitations.

(i) The inspection program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's Principal Inspector or the Flight Standards District Office (FSDO) responsible for review and approval prior to incorporation.

§ 91.410 [Redesignated as § 91.1505]

11. Redesignate § 91.410 as new § 91.1505.

§ 91.410 [Added and Reserved]

12. A new § 91.410 is added and reserved.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

13. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44012, 46105, 46105, 46301.

14. Amend § 121.1 by adding a new paragraph (g) to read as follows:

§ 121.1 Applicability.

* * * * *

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

15. Amend part 121 by adding a new Subpart AA to read as follows:

Subpart AA—Continued Airworthiness and Safety Improvements

Sec.
121.1101 Purpose and definition.
121.1103–121.1115 [Reserved]
121.1117 Flammability reduction means.

Subpart AA—Continued Airworthiness and Safety Improvements

§ 121.1101 Purpose and definition.

(a) This subpart requires persons holding an air carrier or operating certificate under part 119 of this chapter to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ 121.1103–121.1115 [Reserved]

§ 121.1117 Flammability reduction means.

(a) *Applicability.* This section applies to certificate holders operating transport category, turbine-powered airplanes for which development of an ignition mitigation means (IMM), flammability reduction means (FRM), or Flammability Impact Mitigation Means (FIMM) is required under §§ 25.1815, 25.1817, or 25.1819 of this chapter.

(b) *New Production Airplanes.* Except in accordance with § 121.628 of this part, no person may operate an airplane on which IMM or FRM has been installed by the type certificate holder or licensee under 14 CFR 25.1821 unless the IMM or FRM is operational.

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraphs (e)(1) and (e)(2) of this section, no certificate holder may operate any airplane subject to this section that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met:

(1) The certificate holder complies with 14 CFR 25.1817 by the applicable date stated in that section.

(2) The certificate holder installs IMM, FRM or FIMM, as applicable, that

is approved by the FAA Oversight Office.

(3) Except in accordance with § 121.628 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(d) *Retrofit.* After the dates specified in paragraph (e) of this section, no certificate holder may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM or FIMM, if required by §§ 25.1815, 25.1817, or 25.1819 of this chapter, that are approved by the FAA Oversight Office, are installed in at least the percentage of the operator's fleet of each airplane model indicated in the applicable column of Table 1 of this section.

(2) Except in accordance with § 121.628 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times.* The installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1) or (e)(2) of this section.

(1) The applicable dates specified in Table 1.

TABLE 1

Model	Compliance date for 50% of fleet	Compliance date for 100% of fleet
Boeing		
747 Series	December 31, 2009	December 31, 2012.
737 Series	March 31, 2010	March 31, 2013.
777 Series	March 31, 2010	March 31, 2013.
767 Series	September 30, 2010	September 30, 2013.
757 Series	March 31, 2011	March 31, 2014.
707/720 Series	December 31, 2011	December 31, 2014.
Airbus		
A319, A320, A321 Series	December 31, 2010	December 31, 2013.
A300, A310 Series	June 30, 2011	June 30, 2014.
A330, A340 Series	December 31, 2011	December 31, 2014.
All other affected models	Within 4 years after the effective date of this amendment.	Within 7 years after the effective date of this amendment.

(2) For those certificate holders that have only one airplane of a model identified in Table 1, the compliance date is that stated for 100 percent of Fleet in Table 1 of this section.

(f) *Early Compliance.* Notwithstanding paragraphs (c) and (d) of this section, no person may operate an airplane on which IMM or FRM has been installed unless the IMM or FRM is operational, except in accordance with § 121.628 of this part.

(g) *Maintenance Program Revisions.* No certificate holder may operate an airplane to which this section applies after the date specified in paragraph (g)(1) or (g)(2) of this section, as applicable, unless the maintenance program for that airplane is revised to include applicable airworthiness limitations that are approved by the FAA Oversight Office under §§ 25.1815, 25.1817 or 25.1819 of this chapter.

(1) For any airplane that must be modified in accordance with paragraph (d) of this section, the date of return to service after those modifications are accomplished.

(2) For any airplane that is not required to be modified in accordance with paragraph (d) of this section, the date one year after the date approval of the airworthiness limitations by the FAA Oversight Office.

(h) After the maintenance program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.1817, or 25.1819 of this chapter, the certificate holder must revise the maintenance program for the airplane to include those airworthiness limitations.

(i) The maintenance program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's Principal Inspector responsible for review and approval prior to incorporation

§ 121.368 [Redesignated as § 121.1105]

16. Redesignate 121.368 as new § 121.1105.

§ 121.368 [Added and Reserved]

17. A new § 121.368 is added and reserved.

§ 121.370 [Redesignated as § 121.1107]

18. Redesignate § 121.370 as new § 121.1107.

§ 121.370 [Added and Reserved]

19. A new § 121.370 is added and reserved.

§ 121.370a [Redesignated as § 121.1109]

20–21. Redesignate § 121.370a as new § 121.1109.

§ 121.370a [Added and Reserved]

PART 125—CERTIFICATION AND OPERATIONS; AIRPLANES HAVING A SEATING CAPCITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

22. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722

23. Amend § 125.1 by adding a new paragraph (e) to read as follows:

§ 125.1 Applicability.

* * * * *

(e) This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.

24. Amend part 125 by adding a new subpart M to read as follows:

Subpart M—Continued Airworthiness and Safety Improvements

Sec.

125.501 Purpose and definition.

125.503–125.507 [Reserved]

125.509 Flammability reduction means.

Subpart M—Continued Airworthiness and Safety Improvements

§ 125.501 Purpose and definition.

(a) This subpart establishes requirements for operators to take actions necessary to report the continued airworthiness of each airplane. Such actions may include, but are not limited to, revising the inspection program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certification or supplemental type certificate, as determined by the Administrator.

§§ 125.503–125.507 [Reserved]

§ 125.509 Flammability reduction means.

(a) *Applicability.* This section applies to certificate holders operating transport category, turbine-powered airplanes for which development of an ignition mitigation means (IMM), flammability reduction means (FRM), or Flammability Impact Mitigation Means (FIMM) is required under §§ 25.1815, 25.1817, or 25.1819 of this chapter.

(b) *New Production Airplanes.* Except in accordance with § 125.201 of this part, no person may operate an airplane on which IMM or FRM has been installed by the type certificate holder or licensee under 14 CFR 25.1821 unless the IMM or FRM is operational.

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraphs (e)(1) and (e)(2) of this section, no certificate holder may operate any airplane subject to this section that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met—

(1) The certificate holder complies with 14 CFR 25.1817 by the applicable date stated in that section.

(2) The certificate holder installs IMM, FRM or FIMM, as applicable, that is approved by the FAA Oversight Office.

(3) Except in accordance with § 125.201 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(d) *Retrofit.* After the dates specified in paragraph (e) of this section, no certificate holder may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM or FIMM, if required by §§ 25.1815, 25.1817, or 25.1819 of this chapter, that are approved by the FAA Oversight Office, are installed in at least the percentage of the operator's fleet of each airplane model indicated in the applicable column of Table 1 of this section.

(2) Except in accordance with § 125.201 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times.* The installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1) or (e)(2) of this section.

(1) The applicable dates specified in Table 1.

TABLE 1

Model	Compliance date for 50% of fleet	Compliance date for 100% of fleet
Boeing		
747 Series	December 31, 2009	December 31, 2012.
737 Series	March 31, 2010	March 31, 2013.
777 Series	March 31, 2010	March 31, 2013.
767 Series	September 30, 2010	September 30, 2013.
757 Series	March 31, 2011	March 31, 2014.
707/720 Series	December 31, 2011	December 31, 2014.
Airbus		
A319, A320, A321 Series	December 31, 2010	December 31, 2013.
A300, A310 Series	June 30, 2011	June 30, 2014.
A330, A340 Series	December 31, 2011	December 31, 2014.
All other affected models	Within 4 years after the effective date of this amendment.	Within 7 years after the effective date of this amendment.

(2) For those certificate holders that have only one airplane of a model identified in Table 1, the compliance date is that stated for 100 percent of Fleet in Table 1 of this section.

(f) *Early Compliance.* Notwithstanding paragraphs (c) and (d) of this section, no person may operate an airplane on which IMM or FRM has been installed unless the IMM or FRM is operational, except in accordance with § 125.201 of this part.

(g) *Maintenance Program Revisions.* No certificate holder may operate an airplane to which this section applies after the date specified in paragraph (g)(1) or (g)(2) of this section, as applicable, unless the maintenance program for that airplane is revised to include applicable airworthiness limitations that are approved by the FAA Oversight Office under §§ 25.1815, 25.1817 or 25.1819 of this chapter.

(1) For any airplane that must be modified in accordance with paragraph (d) of this section, the date of return to service after those modifications are accomplished.

(2) For any airplane that is not required to be modified in accordance with paragraph (d) of this section, the date one year after the date approval of the airworthiness limitations by the FAA Oversight Office.

(h) After the maintenance program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.1817, or 25.1819 of this chapter, the certificate holder must revise the maintenance program for the airplane to include those airworthiness limitations.

(i) The maintenance program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's Principal Inspector responsible for review and approval prior to incorporation.

§ 125.248 [Redesignated as § 125.505]

25. Redesignate § 125.248 as new § 125.505.

§ 125.248 [Added and Reserved]

26. A new § 125.248 is added and reserved.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

27. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 49113, 440119, 44101, 44701–44702, 447–5, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 44105, 107–71 sec. 104.

28. Amend § 129.1 by revising paragraph (b), and adding a new paragraph (d) to read as follows:

§ 129.1 Applicability and definition.

* * * * *

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14 and 129.20 and subpart B of this part also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

* * * * *

(d) This part also establishes requirements for an operator to take actions to support the continued airworthiness of each airplane.

29. Amend part 129 by adding subpart A and designating § 129.1 through § 129.15 and § 129.17 through § 129.29 into subpart A to read as follows:

Subpart A—General

Sec.

129.1 Applicability and definitions.
129.11 Operations specifications.
129.13 Airworthiness and registration certificates.
129.14 Maintenance program and minimum equipment list requirements for U.S. registered aircraft.
129.15 Flight crewmember certificates.
129.17 Radio equipment.
129.18 Collision avoidance system.
129.19 Air traffic rules and procedures.
129.20 Digital flight data recorders.
129.21 Control of traffic.
129.23 Transport category cargo service airplanes: Increased zero fuel and landing weights.
129.25 Airplane security.
129.28 Flightdeck security.
129.29 Smoking prohibitions.

30. Amend part 129 by adding subpart B to read as follows:

Subpart B—Continued Airworthiness and Safety Improvements

Sec.

129.101 Purpose and definition.
129.103–129.115 [Reserved]
129.117 Flammability reduction means.

Subpart B—Continued Airworthiness and Safety Improvements

§ 129.101 Purpose and definition.

(a) This subpart requires a foreign person or foreign air carrier operating a U.S.-registered airplane in common carriage to support the continued airworthiness of each airplane. These requirements may include, but are not limited to, revising the maintenance program, incorporating design changes, and incorporating revisions to Instructions for Continued Airworthiness.

(b) For purposes of this subpart, the ''FAA Oversight Office'' is the aircraft certification office or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

§ § 129.103–129.115 [Reserved]

§ 129.117 Flammability reduction means.

(a) *Applicability.* This section applies to foreign persons and foreign air carriers operating transport category, turbine-powered airplanes for which development of an ignition mitigation means (IMM), flammability reduction means (FRM), or Flammability Impact Mitigation Means (FIMM) is required under §§ 25.1815, 25.1817, or 25.1819 of this chapter.

(b) *New Production Airplanes.* Except in accordance with § 129.14 of this part, no foreign person or foreign air carrier may operate an airplane on which IMM or FRM has been installed by the type certificate holder or licensee under 14 CFR 25.1821 unless the IMM or FRM is operational.

(c) *Auxiliary Fuel Tanks.* After the applicable date stated in paragraphs (e)(1) and (e)(2), no foreign person or foreign air carrier may operate any airplane subject to this section that has an Auxiliary Fuel Tank installed pursuant to a field approval, unless the following requirements are met:

(1) The foreign person or foreign air carrier complies with 14 CFR 25.1817 by the applicable date stated in that section.

(2) The foreign person or foreign air carrier installs IMM, FRM or FIMM, as applicable, that are approved by the FAA Oversight Office.

(3) Except in accordance with § 129.14 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(d) *Retrofit.* After the dates specified in paragraph (e) of this section, no foreign person or foreign air carrier may operate an airplane to which this section applies unless the requirements of paragraphs (d)(1) and (d)(2) of this section are met.

(1) IMM, FRM or FIMM, if required by §§ 25.1815, 25.1817, or 25.1819 of this chapter, that are approved by the FAA Oversight Office, are installed in at least the percentage of the operator's fleet of each airplane model indicated in the applicable column of Table 1 of this section.

(2) Except in accordance with § 129.14 of this part, the IMM, FRM or FIMM, as applicable, are operational.

(e) *Compliance Times.* The installations required by paragraph (d) of this section must be accomplished no later than the applicable dates specified in paragraph (e)(1) or (e)(2) of this section.

(1) The applicable dates specified in Table 1.

TABLE 1

Model	Compliance date for 50% of fleet	Compliance date for 100% of fleet
Boeing		
747 Series	December 31, 2009	December 31, 2012.
737 Series	March 31, 2010	March 31, 2013.
777 Series	March 31, 2010	March 31, 2013.
767 Series	September 30, 2010	September 30, 2013.
757 Series	March 31, 2011	March 31, 2014.
707/720 Series	December 31, 2011	December 31, 2014.
Airbus		
A319, A320, A321 Series	December 31, 2010	December 31, 2013.

TABLE 1—Continued

Model	Compliance date for 50% of fleet	Compliance date for 100% of fleet
A300, A310 Series	June 30, 2011	June 30, 2014.
A330, A340 Series	December 31, 2011	December 31, 2014.
All other affected models	Within 4 years after the effective date of this amendment.	Within 7 years after the effective date of this amendment.

(2) For those foreign persons or foreign air carriers that have only one airplane of a model identified in Table 1, the compliance date is that stated for 100 percent of Fleet in Table 1 of this section.

(f) *Early Compliance.* Notwithstanding paragraphs (c) and (d) of this section, no person may operate an airplane on which IMM or FRM has been installed unless the IMM or FRM is operational, except in accordance with § 129.14 of this part.

(g) *Maintenance Program Revisions.* No foreign person or foreign air carrier may operate an airplane to which this section applies after the date specified in paragraph (g)(1) or (g)(2) of this section, as applicable, unless the maintenance program for that airplane is revised to include applicable airworthiness limitations that are approved by the FAA Oversight Office under §§ 25.1815, 25.1817 or 25.1819 of this chapter.

(1) For any airplane that must be modified in accordance with paragraph (d) of this section, the date of return to service after those modifications are accomplished.

(2) For any airplane that is not required to be modified in accordance with paragraph (d) of this section, the date one year after the date approval of the airworthiness limitations by the FAA Oversight Office.

(h) After the maintenance program is revised as required by paragraph (g) of this section, before returning an airplane to service after any alteration for which airworthiness limitations are required by §§ 25.1817, or 25.1819 of this chapter, the foreign person or foreign air carrier must revise the maintenance program for the airplane to include those airworthiness limitations.

(i) The maintenance program changes identified in paragraphs (g) and (h) of this section must be submitted to the operator's Principal Inspector for review and approval prior to incorporation.

§ 129.16 [Redesignated as § 129.109]

31. Redesignate § 129.16 as new § 129.109.

§ 129.16 [Added and Reserved]

32. A new § 129.16 is added and reserved.

§ 129.32 [Redesignated as § 129.107]

33. Redesignate § 129.32 as new § 129.107.

§ 129.32 [Added and Reserved]

34. A new § 129.32 is added and reserved.

§ 129.33 [Redesignated as § 129.105]

35. Redesignate § 129.33 as new § 129.105.

§ 129.33 [Added and Reserved]

36. A new § 129.33 is added and reserved.

Issued in Washington, DC, on November 17, 2005.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. 05–23109 Filed 11–17–05; 4:06 pm]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
November 23, 2005

Part III

Postal Service

39 CFR Parts 20 and 111

International Mail Manual; Incorporation by Reference; Republic of the Marshall Islands and Federated States of Micronesia; New Postal Rates and Fees; Domestic Mail; Final Rules

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of Issue 31 of the International Mail Manual (IMM), and its incorporation by reference in the Code of Federal Regulations.

EFFECTIVE DATE: This final rule is effective on November 23, 2005. The incorporation by reference of Issue 31 of the IMM is approved by the Director of the Federal Register as of November 23, 2005.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, (202) 268–7262.

SUPPLEMENTARY INFORMATION: Issue 31 of the International Mail Manual was issued on May 31, 2005. It replaced the previous issue of the IMM, and contained all IMM revisions from August 5, 2004 through May 12, 2005.

The International Mail Manual is available to the public on a subscription basis only from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The subscription price for one issue is currently $36 to addresses in the United States, and $50.40 to all foreign addresses. The IMM is also published and available to all users on the Internet at *http://pe.usps.gov.*

List of Subjects in 39 CFR Part 20

Foreign relations; Incorporation by reference.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR Part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Sections 20.1 and 20.2 are revised to read as follows:

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its International Mail Manual (IMM), Issue 31, dated May 31, 2005. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The current Issue of the IMM is incorporated by reference in paragraph (a) of this section. Successive Issues of the IMM are listed in the following table:

International Mail Manual	Date of issuance
Issue 1	November 13, 1981.
Issue 2	March 1, 1983.
Issue 3	July 4, 1985.
Issue 4	September 18, 1986.
Issue 5	April 21, 1988.
Issue 6	October 5, 1988.
Issue 7	July 20, 1989.
Issue 8	June 28, 1990.
Issue 9	February 3, 1991.
Issue 10	June 25, 1992.
Issue 11	December 24, 1992.
Issue 12	July 8, 1993.
Issue 13	February 3, 1994.
Issue 14	August 4, 1994.
Issue 15	July 9, 1995.
Issue 16	January 4, 1996.
Issue 17	September 12, 1996.
Issue 18	June 9, 1997.
Issue 19	October 9, 1997.
Issue 20	July 2, 1998.
Issue 21	May 3, 1999.
Issue 22	January 1, 2000.
Issue 23	July 1, 2000.
Issue 24	January 1, 2001.
Issue 25	July 1, 2001.
Issue 26	January 1, 2002.
Issue 27	June 30, 2002.
Issue 28	January 1, 2003.
Issue 29	July 1, 2003.
Issue 30	August 1, 2004.
Issue 31	May 31, 2005.

§ 20.2 Effective date of the International Mail Manual.

The provisions of the International Mail Manual Issue 31, effective May 31, 2005 are applicable with respect to the international mail services of the Postal Service.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–23171 Filed 11–22–05; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 20

International Mail: New Postal Rates and Fees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service ™ is adopting new international mail postage rates and fees. The total international rate increase is 5.9 percent. To the extent possible, the targeted increase is 5.4 percent, consistent with our domestic rate filing with the Postal Rate Commission. We are implementing this international pricing change at the same time as our domestic pricing change.

EFFECTIVE DATE: 12:01 a.m., Sunday, January 8, 2006.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 202–268–7262, or Thomas P. Philson at 202–268–7355.

SUPPLEMENTARY INFORMATION: On September 15, 2005, the Postal Service published in the **Federal Register** (70 FR 54493) a notice of proposed changes in international postage rates. We requested comments by October 17, 2005, and received one comment from a private individual.

The private individual asked why the 1-ounce airmail letter-post rate is less than the rate for aerogrammes to Canada and Mexico. He envisions situations where customers might purchase aerogrammes at the full rate and alter them into airmail letter-post to secure the lower price. His solution is to print another aerogramme at the letter-post rate.

We agree that aerogramme users could possibly alter their aerogrammes to receive the lower rate. Because of the relatively low volume of aerogrammes worldwide and the relatively low potential cost savings on each altered aerogramme, however, we do not believe this practice will be common or will result in serious revenue loss. In fact, the letter-post rate to Canada and Mexico is currently below the aerogramme rate, and this rate relationship has not caused the problem noted by the private individual. In addition, printing and stocking two aerogrammes with different postage rates would be costly. We note that enclosures are not permitted in aerogrammes. We have been advised by the private individual that mailers may try to send aerogrammes with enclosures, and we will monitor the situation and take action if necessary.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ After reviewing and considering the comment, the Postal Service hereby adopts the following postage rates and fees and amends the *International Mail Manual* (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Amend the *International Mail Manual* (IMM) to incorporate the following postage rates and fees.

INTERNATIONAL RATES AND FEES

GLOBAL EXPRESS GUARANTEED—DOCUMENT SERVICE RATES/GROUPS

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
0.5	$25.25	$26.25	$33.75	$33.75	$47.50	$34.75	$35.75	$68.50
1	34.75	35.75	41.00	47.50	54.75	49.50	48.50	79.00
2	40.00	42.25	48.50	54.75	68.50	58.00	54.75	93.75
3	42.25	48.50	55.75	62.25	83.25	65.25	63.25	106.50
4	45.25	52.75	63.25	69.50	98.00	71.75	71.75	118.00
5	48.50	58.00	70.50	77.00	111.75	79.00	79.00	130.75
6	50.50	61.25	76.00	84.25	125.50	84.25	86.50	143.25
7	53.75	64.25	80.00	90.75	138.00	90.75	93.75	156.00
8	55.75	68.50	84.25	98.00	150.75	96.00	101.25	168.75
9	58.00	71.75	89.50	105.50	164.50	101.25	108.50	181.25
10	61.25	73.75	93.75	109.50	174.00	107.50	116.00	189.75
11	63.25	77.00	97.00	115.00	184.50	110.75	122.25	201.25
12	65.25	80.00	101.25	121.25	195.00	115.00	128.50	214.00
13	68.50	83.25	104.25	126.50	205.50	119.00	133.75	226.50
14	70.50	85.25	108.50	131.75	216.00	123.25	139.25	238.25
15	72.75	88.50	111.75	137.00	225.50	127.50	144.50	250.75
16	76.00	91.75	115.00	143.25	235.00	131.75	149.75	262.50
17	78.00	93.75	119.00	148.50	243.50	136.00	155.00	274.00
18	80.00	97.00	122.25	154.00	250.75	140.25	161.25	285.75
19	83.25	100.25	126.50	159.25	259.25	144.50	167.50	297.25
20	85.25	102.25	129.75	164.50	266.75	148.50	174.00	308.75
21	87.50	105.50	132.75	169.75	274.00	151.75	180.25	318.25
22	89.50	107.50	137.00	175.00	282.50	156.00	185.50	327.75
23	91.75	110.75	140.25	180.25	289.75	160.25	190.75	335.25
24	94.75	113.75	144.50	185.50	298.25	164.50	196.00	342.50
25	97.00	116.00	147.50	190.75	305.75	168.75	201.25	351.00
26	99.00	119.00	150.75	196.00	314.00	172.75	206.50	358.25
27	101.25	121.25	155.00	200.25	321.50	177.00	211.75	365.75
28	103.25	124.25	158.00	205.50	330.00	181.25	217.00	374.25
29	105.50	126.50	161.25	210.75	337.25	185.50	222.50	381.50
30	108.50	130.75	166.50	218.25	348.75	191.75	227.75	393.25
31	110.75	133.75	170.75	223.50	356.25	196.00	233.00	401.50
32	112.75	136.00	174.00	228.75	364.75	200.25	238.25	409.00
33	115.00	138.00	178.25	234.00	372.00	204.50	243.50	417.50
34	118.00	139.25	181.25	239.25	380.50	208.75	248.75	424.75
35	120.25	141.25	184.50	244.50	389.00	213.00	254.00	433.25
36	122.25	143.25	188.75	248.75	396.25	217.00	259.25	440.50
37	124.25	145.50	191.75	254.00	404.75	221.25	264.50	449.00
38	126.50	147.50	196.00	259.25	412.00	225.50	269.75	456.50
39	128.50	149.75	199.25	264.50	419.50	229.75	275.00	463.75
40	130.75	151.75	202.25	269.75	425.75	234.00	280.25	472.25
41	132.75	154.00	206.50	275.00	433.25	238.25	285.75	479.50
42	137.00	156.00	209.75	280.25	440.50	242.50	291.00	488.00
43	139.25	158.00	214.00	285.75	448.00	246.75	296.25	495.50
44	141.25	159.25	217.00	291.00	455.25	250.75	301.50	503.75
45	144.50	161.25	221.25	295.00	462.75	255.00	306.75	511.25
46	146.50	163.25	224.50	300.50	470.00	259.25	312.00	518.50
47	148.50	164.50	227.75	305.75	476.50	263.50	317.25	527.00
48	150.75	166.50	232.00	311.00	483.75	267.75	322.50	534.50
49	154.00	168.75	235.00	316.25	491.25	272.00	327.75	542.75
50	156.00	171.75	241.25	324.75	503.75	278.25	333.00	556.50
51	160.25	174.00	244.50	330.00	511.25	278.25	338.25	572.25
52	162.25	176.00	248.75	335.25	518.50	286.75	343.50	572.25
53	164.50	178.25	252.00	340.50	526.00	291.00	348.75	589.25
54	167.50	179.25	256.00	345.75	533.25	295.00	354.25	589.25
55	168.75	181.25	259.25	351.00	540.75	298.25	359.50	603.00
56	170.75	182.25	263.50	356.25	548.00	303.50	364.75	603.00
57	171.75	184.50	266.75	361.50	555.50	306.75	370.00	615.50
58	172.75	185.50	269.75	366.75	561.75	312.00	375.25	615.50
59	175.00	187.50	274.00	372.00	569.25	315.25	380.50	629.25
60	176.00	189.75	277.25	377.25	576.50	320.50	385.75	629.25
61	178.25	190.75	281.50	382.50	584.00	323.50	391.00	645.00

GLOBAL EXPRESS GUARANTEED—DOCUMENT SERVICE RATES/GROUPS—Continued

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
62	179.25	191.75	284.50	386.75	590.25	330.00	396.25	645.00
63	180.25	194.00	288.75	392.00	598.75	332.00	401.50	660.75
64	181.25	195.00	292.00	397.25	601.75	338.25	406.75	660.75
65	182.25	197.00	296.25	402.75	613.50	340.50	412.00	676.75
66	183.50	198.25	299.25	408.00	613.50	346.75	417.50	676.75
67	184.50	200.25	302.50	413.25	625.00	348.75	422.75	692.50
68	185.50	202.25	306.75	418.50	627.25	355.25	428.00	692.50
69	186.50	203.50	310.00	423.75	636.50	357.25	433.25	708.25
70	187.50	204.50	314.00	429.00	636.50	363.75	438.50	708.25

GLOBAL EXPRESS GUARANTEED—NON-DOCUMENT SERVICE RATES/GROUPS

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
1	$38.00	$40.00	$46.50	$50.50	$62.25	$54.75	$58.00	$86.50
2	43.25	47.50	53.75	58.00	76.00	63.25	61.25	101.25
3	46.50	53.75	61.25	67.50	90.75	70.50	66.50	115.00
4	49.50	58.00	68.50	74.75	105.50	77.00	73.75	126.50
5	52.75	63.25	76.00	82.25	119.00	84.25	81.25	141.25
6	54.75	66.50	81.25	89.50	132.75	89.50	88.50	154.00
7	58.00	69.50	85.25	96.00	145.50	96.00	96.00	166.50
8	60.00	74.75	90.75	103.25	158.00	101.25	103.25	179.25
9	62.25	78.00	96.00	110.75	171.75	106.50	110.75	191.75
10	65.25	81.25	100.25	117.00	186.50	112.75	118.00	200.25
11	67.50	84.25	105.50	122.25	197.00	118.00	124.25	217.00
12	69.50	87.50	109.50	128.50	207.75	122.25	129.75	229.75
13	72.75	90.75	112.75	133.75	218.25	126.50	136.00	242.50
14	74.75	92.75	117.00	139.25	228.75	130.75	141.25	254.00
15	77.00	96.00	120.25	144.50	241.25	138.00	146.50	266.75
16	80.00	99.00	123.25	150.75	250.75	142.25	151.75	278.25
17	82.25	102.25	127.50	156.00	259.25	146.50	157.00	289.75
18	84.25	105.50	130.75	161.25	266.75	150.75	163.25	301.50
19	87.50	108.50	135.00	166.50	275.00	155.00	169.75	313.00
20	91.75	112.75	138.00	174.00	282.50	159.25	176.00	324.75
21	93.75	116.00	141.25	179.25	289.75	162.25	182.25	334.00
22	96.00	118.00	145.50	184.50	298.25	166.50	187.50	343.50
23	98.00	121.25	148.50	189.75	305.75	170.75	193.00	351.00
24	101.25	124.25	152.75	195.00	314.00	175.00	198.25	358.25
25	103.25	126.50	156.00	200.25	321.50	179.25	203.50	366.75
26	105.50	128.50	161.25	205.50	330.00	183.50	208.75	374.25
27	107.50	129.75	165.50	209.75	337.25	187.50	214.00	381.50
28	109.50	132.75	168.75	215.00	345.75	191.75	219.25	390.00
29	111.75	135.00	171.75	220.25	353.00	196.00	224.50	397.25
30	115.00	139.25	177.00	227.75	364.75	202.25	229.75	409.00
31	117.00	142.25	181.25	233.00	372.00	206.50	235.00	417.50
32	119.00	144.50	184.50	238.25	380.50	210.75	240.25	424.75
33	121.25	146.50	188.75	243.50	387.75	215.00	245.50	433.25
34	124.25	148.50	191.75	248.75	396.25	219.25	250.75	440.50
35	126.50	150.75	195.00	254.00	404.75	223.50	256.00	454.25
36	128.50	152.75	199.25	258.25	412.00	227.75	261.50	461.75
37	130.75	155.00	202.25	263.50	420.50	232.00	266.75	470.00
38	132.75	157.00	206.50	268.75	428.00	236.00	272.00	477.50
39	135.00	159.25	209.75	274.00	435.25	240.25	277.25	484.75
40	137.00	161.25	213.00	282.50	441.75	244.50	282.50	493.25
41	139.25	163.25	217.00	287.75	449.00	248.75	287.75	500.75
42	143.25	165.50	220.25	293.00	456.50	253.00	293.00	509.00
43	145.50	167.50	224.50	298.25	463.75	257.25	298.25	516.50
44	147.50	168.75	227.75	303.50	471.25	261.50	303.50	525.00
45	150.75	170.75	232.00	311.00	478.50	265.50	308.75	532.25
46	152.75	172.75	235.00	316.25	486.00	269.75	314.00	534.50
47	155.00	174.00	238.25	321.50	492.25	274.00	319.25	542.75
48	157.00	176.00	242.50	326.75	499.50	278.25	324.75	550.25
49	159.25	178.25	245.50	332.00	507.00	282.50	330.00	558.50
50	160.25	181.25	252.00	337.25	519.50	288.75	335.25	572.25
51	164.50	183.50	255.00	342.50	525.00	291.00	340.50	588.25
52	166.50	185.50	259.25	347.75	532.25	297.25	345.75	588.25
53	168.75	187.50	262.50	353.00	539.75	301.50	351.00	605.00
54	171.75	188.75	266.75	358.25	547.00	305.75	356.25	605.00
55	172.75	190.75	269.75	363.75	554.50	308.75	361.50	618.75

GLOBAL EXPRESS GUARANTEED—NON-DOCUMENT SERVICE RATES/GROUPS—Continued

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
56	175.00	191.75	274.00	369.00	561.75	314.00	366.75	618.75
57	176.00	194.00	277.25	374.25	569.25	317.25	372.00	631.25
58	177.00	195.00	280.25	379.50	575.50	322.50	377.25	631.25
59	179.25	197.00	284.50	384.75	582.75	325.75	382.50	645.00
60	179.25	199.25	287.75	390.00	590.25	331.00	387.75	645.00
61	181.25	203.50	292.00	395.25	597.50	334.00	393.25	660.75
62	182.25	204.50	295.00	399.50	604.00	340.50	398.50	660.75
63	183.50	206.50	299.25	404.75	612.25	342.50	403.75	676.75
64	184.50	207.75	302.50	410.00	615.50	348.75	409.00	676.75
65	185.50	209.75	306.75	415.25	627.25	351.00	414.25	692.50
66	186.50	210.75	310.00	420.50	627.25	357.25	419.50	692.50
67	187.50	213.00	313.00	425.75	638.75	359.50	424.75	708.25
68	188.75	215.00	317.25	431.00	640.75	365.75	430.00	708.25
69	189.75	216.00	320.50	436.25	650.25	367.75	435.25	724.00
70	190.75	217.00	324.75	441.75	650.25	374.25	440.50	724.00

GLOBAL EXPRESS MAIL

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12
0.5	$16.25	$17.75	$21.00	$18.25	$20.00	$18.00	$24.25	$18.00	$20.00	$24.00	$30.00	$23.50
1	17.15	21.10	26.10	22.55	24.00	20.20	27.40	21.60	23.20	26.60	32.95	26.10
2	17.90	25.00	30.30	26.85	27.45	22.80	30.55	25.30	27.40	29.80	37.40	29.50
3	19.25	29.10	34.50	31.15	32.15	26.30	33.75	29.50	31.60	34.25	42.70	33.75
4	20.30	32.80	37.70	35.45	36.80	29.65	36.90	33.75	36.90	38.45	47.15	37.95
5	21.60	36.05	40.85	39.45	41.30	33.55	40.05	37.95	42.15	42.95	52.45	42.15
6	24.00	38.35	44.00	43.00	45.80	36.85	43.40	42.35	47.05	47.45	57.45	46.40
7	26.35	40.70	47.15	46.55	50.30	40.10	46.80	46.80	51.95	51.90	62.45	50.60
8	28.70	43.00	50.35	50.10	54.75	43.35	50.15	51.20	56.85	56.40	67.45	54.80
9	31.10	45.30	53.50	53.65	59.25	46.65	53.55	55.65	61.75	60.85	72.45	59.00
10	33.45	47.65	56.65	57.20	63.70	49.90	56.90	60.10	66.65	65.35	77.45	63.25
11	35.85	49.95	59.80	60.75	68.20	53.15	60.30	64.50	71.55	69.85	82.50	67.45
12	38.20	52.30	63.00	64.30	72.65	56.45	63.65	68.95	76.45	74.30	87.50	71.65
13	40.60	54.60	66.15	67.80	77.15	59.70	67.05	73.35	81.35	78.80	92.50	75.90
14	42.95	56.90	69.30	71.35	81.65	63.00	70.40	77.80	86.25	83.25	97.50	80.10
15	45.30	59.25	72.45	74.90	86.10	66.25	73.80	82.20	91.15	87.75	102.50	84.30
16	47.70	61.55	75.60	78.45	90.60	69.50	77.15	86.65	96.05	92.25	107.50	88.55
17	50.05	63.85	78.80	82.00	95.05	72.80	80.55	91.05	100.95	96.70	112.50	92.75
18	52.45	66.20	81.95	85.55	99.55	76.05	83.90	95.50	105.85	101.20	117.50	96.95
19	54.80	68.50	85.10	89.10	104.05	79.30	87.25	99.90	110.80	105.65	122.55	101.20
20	57.20	70.85	88.25	92.65	108.50	82.60	90.65	104.35	115.70	110.15	127.55	105.40
21	59.55	73.15	91.45	96.20	113.00	85.85	94.00	108.75	120.60	114.60	132.55	109.60
22	61.90	75.45	94.60	99.70	117.45	89.10	97.40	113.20	125.50	119.10	137.55	113.85
23	64.30	77.80	97.75	103.25	121.95	92.40	100.75	117.65	130.40	123.60	142.55	118.05
24	66.65	80.10	100.90	106.80	126.45	95.65	104.15	122.05	135.30	128.05	147.55	122.25
25	69.05	82.40	104.10	110.35	130.90	98.90	107.50	126.50	140.20	132.55	152.55	126.50
26	71.40	84.75	107.25	113.90	135.40	102.20	110.90	130.90	145.10	137.00	157.55	130.70
27	73.80	87.05	110.40	117.45	139.85	105.45	114.25	135.35	150.00	141.50	162.60	134.90
28	76.15	89.40	113.55	121.00	144.35	108.70	117.65	139.75	154.90	146.00	167.60	139.15
29	78.50	91.70	116.75	124.55	148.80	112.00	121.00	144.20	159.80	150.45	172.60	143.35
30	80.90	94.00	119.90	128.05	153.30	115.25	124.35	148.60	164.70	154.95	177.60	147.55
31	83.25	96.35	123.05	131.60	157.80	118.50	127.75	153.05	169.60	159.40	182.60	151.80
32	85.65	98.65	126.20	135.15	162.25	121.80	131.10	157.45	174.50	163.90	187.60	156.00
33	88.00	100.95	129.40	138.70	166.75	125.05	134.50	161.90	179.40	168.40	192.60	160.20
34	90.40	103.30	132.55	142.25	171.20	128.30	137.85	166.30	184.30	172.85	197.65	164.40
35	92.75	105.60	135.70	145.80	175.70	131.60	141.25	170.75	189.20	177.35	202.65	168.65
36	95.10	107.95	138.85	149.35	180.20	134.85	144.60	175.15	194.10	181.80	207.65	172.85
37	97.50	110.25	142.05	152.90	184.65	138.15	148.00	179.60	199.00	186.30	212.65	177.05
38	99.85	112.55	145.20	156.45	189.15	141.40	151.35	184.05	203.90	190.75	217.65	181.30
39	102.25	114.90	148.35	159.95	193.60	144.65	154.75	188.45	208.80	195.25	222.65	185.50
40	104.60	117.20	151.50	163.50	198.10	147.95	158.10	192.90	213.70	199.75	227.65	189.70
41	107.00	119.50	154.65	167.05	202.60	151.20	161.45	197.30	218.60	204.20	232.65	193.95
42	109.35	121.85	157.85	170.60	207.05	154.45	164.85	201.75	223.50	208.70	237.70	198.15
43	111.70	124.15	161.00	174.15	211.55	157.75	168.20	206.15	228.40	213.15	242.70	202.35
44	114.10	126.50	164.15	177.70	216.00	161.00	171.60	210.60	233.30	217.65	247.70	206.60
45	116.45	128.80	167.30	181.25	220.50	164.25	174.95	215.00	238.20	222.15	252.70	210.80
46	118.85	131.10	170.50	184.80	225.00	167.55	178.35	219.45	243.10	226.60	257.70	215.00
47	121.20	133.45	173.65	188.35	229.45	170.80	181.70	223.85	248.00	231.10	262.70	219.25
48	123.60	135.75	176.80	191.85	233.95	174.05	185.10	228.30	252.90	235.55	267.70	223.45

GLOBAL EXPRESS MAIL—Continued

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12
49	125.95	138.05	179.95	195.40	238.40	177.35	188.45	232.70	257.80	240.05	272.70	227.65
50	128.30	140.40	183.15	198.95	242.90	180.60	191.85	237.15	262.70	244.55	277.75	231.90
51	130.70	142.70	186.30	202.50	247.35	183.85	195.20	241.60	267.60	249.00	282.75	236.10
52	133.05	145.05	189.45	206.05	251.85	187.15	198.55	246.00	272.50	253.50	287.75	240.30
53	135.45	147.35	192.60	209.60	256.35	190.40	201.95	250.45	277.40	257.95	292.75	244.55
54	137.80	149.65	195.80	213.15	260.80	193.65	205.30	254.85	282.30	262.45	297.75	248.75
55	140.20	152.00	198.95	216.70	265.30	196.95	208.70	259.30	287.20	266.95	302.75	252.95
56	142.55	154.30	202.10	220.20	269.75	200.20	212.05	263.70	292.10	271.40	307.75	257.20
57	144.95	156.60	205.25	223.75	274.25	203.45	215.45	268.15	297.00	275.90	312.75	261.40
58	147.30	158.95	208.45	227.30	278.75	206.75	218.80	272.55	301.90	280.35	317.80	265.60
59	149.65	161.25	211.60	230.85	283.20	210.00	222.20	277.00	306.80	284.85	322.80	269.80
60	152.05	163.60	214.75	234.40	287.70	213.30	225.55	281.40	311.70	289.30	327.80	274.05
61	154.40	165.90	217.90	237.95	292.15	216.55	228.95	285.85	316.60	293.80	332.80	278.25
62	156.80	168.20	221.10	241.50	296.65	219.80	232.30	290.25	321.50	298.30	337.80	282.45
63	159.15	170.55	224.25	245.05	301.15	223.10	235.65	294.70	326.40	302.75	342.80	286.70
64	161.55	172.85	227.40	248.60	305.60	226.35	239.05	299.15	331.30	307.25	347.80	290.90
65	163.90	175.15	230.55	252.10	310.10	229.60	242.40	303.55	336.25	311.70	352.85	295.10
66	166.25	177.50	233.70	255.65	314.55	232.90	245.80	308.00	341.15	316.20	357.85	299.35
67	N/A	N/A	N/A	N/A	N/A	235.65	249.55	313.00	346.15	320.95	363.10	303.85
68	N/A	N/A	N/A	N/A	N/A	238.40	253.30	318.00	351.15	325.70	368.35	308.35
69	N/A	N/A	N/A	N/A	N/A	241.15	257.05	323.00	356.15	330.45	373.60	312.85
70	N/A	N/A	N/A	N/A	N/A	243.90	260.80	328.00	361.15	335.20	378.85	317.35

EMS corporate account: 5 percent discount from single-piece rates.

GLOBAL PRIORITY MAIL—FLAT-RATE ENVELOPE

Destination	Small	Large
Canada and Mexico	$4.25	$7.50
Other Countries	5.25	9.50

GLOBAL PRIORITY MAIL—VARIABLE WEIGHT

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5
0.5	$6.25	$7.50	$8.50	$9.50	$8.50
1	8.50	9.50	10.50	11.50	12.75
1.5	9.50	10.50	12.75	13.75	14.75
2	11.50	13.75	15.75	16.75	18.00
2.5	12.75	16.75	19.00	20.00	22.25
3	14.75	20.00	22.25	23.25	25.25
3.5	16.75	23.25	24.25	25.25	29.50
4	19.00	26.25	27.50	28.50	32.75

AEROGRAMMES

All Countries	$0.75

POSTAL CARDS AND POSTCARDS

Canada & Mexico	$0.55
Other Countries	0.75

AIRMAIL LETTER-POST

Weight not over (ozs.)	Group 1	Group 2	Group 3	Group 4	Group 5
1	$0.63	$0.63	$0.84	$0.84	$0.84
2	0.90	0.90	1.70	1.80	1.65
3	1.15	1.30	2.55	2.75	2.40
4	1.40	1.75	3.35	3.70	3.20
5	1.70	2.15	4.20	4.65	4.00
6	1.95	2.60	5.05	5.60	4.80
7	2.20	3.00	5.90	6.55	5.60

AIRMAIL LETTER-POST—Continued

Weight not over (ozs.)	Group 1	Group 2	Group 3	Group 4	Group 5
8	2.50	3.45	6.75	7.50	6.40
12	3.25	4.20	7.95	8.85	8.05
16	3.95	5.45	9.15	10.20	9.75
20	4.65	6.65	10.40	11.60	11.45
24	5.30	7.85	11.60	12.95	13.10
28	6.00	9.05	12.80	14.35	14.80
32	6.70	10.30	14.00	15.70	16.50
36	7.40	11.55	15.30	17.15	18.30
40	8.05	12.80	16.55	18.55	20.10
44	8.75	14.05	17.80	19.95	21.85
48	9.45	15.35	19.10	21.40	23.65
52	10.15	16.65	20.40	22.85	25.50
56	10.90	17.95	21.70	24.35	27.35
60	11.65	19.30	23.05	25.80	29.20
64	12.40	20.60	24.35	27.30	31.05

AIRMAIL PARCEL POST

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12	Group 13
1	$14.00	$13.75	$16.75	$17.25	$16.00	$14.75	$17.50	$13.25	$15.25	$16.75	$19.00	$14.75	$18.00
2	14.00	16.35	21.10	21.60	20.80	16.35	20.05	16.85	19.75	19.50	23.20	16.35	20.05
3	15.00	18.70	25.30	25.80	25.80	18.45	22.90	21.10	24.50	22.65	27.40	18.20	23.20
4	16.35	21.35	29.50	30.55	31.35	21.35	25.80	25.55	28.20	25.30	31.60	20.30	26.35
5	17.65	24.25	33.75	35.30	36.90	24.00	28.70	30.30	34.50	27.95	35.85	22.40	29.50
6	18.80	26.35	36.90	38.80	41.35	27.05	31.90	34.40	38.45	31.10	39.50	25.05	32.95
7	19.95	28.45	40.05	42.25	45.85	30.10	35.05	38.50	42.60	34.25	43.20	27.65	36.35
8	21.15	30.55	43.20	45.75	50.35	33.15	42.65	46.70	37.40	46.90	30.30	39.80	38.20
9	22.30	32.65	46.40	49.20	54.80	36.20	41.35	46.75	50.80	40.60	50.60	32.95	43.20
10	23.45	34.80	49.55	52.70	59.30	39.25	44.55	50.85	54.90	43.75	54.30	35.55	46.65
11	24.60	36.90	52.70	56.20	63.75	42.30	47.70	54.95	59.00	46.90	57.95	38.20	50.05
12	25.75	39.00	55.85	59.65	68.25	59.10	63.15	50.05	61.65	40.85	53.50	45.35	50.85
13	26.95	41.10	59.00	63.15	72.75	48.45	63.20	67.25	53.25	65.35	43.50	56.90	54.00
14	28.10	43.20	62.20	66.60	77.20	51.50	57.20	67.30	71.35	56.40	69.05	46.10	60.35
15	29.25	45.30	65.35	70.10	81.70	54.55	60.35	71.40	75.45	59.55	72.75	48.75	63.75
16	30.40	47.45	68.50	73.55	86.15	57.60	63.50	75.50	79.60	62.70	76.40	51.40	67.20
17	31.55	49.55	71.65	77.05	90.65	60.65	66.65	79.65	83.70	65.90	80.10	54.00	70.60
18	32.75	51.65	74.85	80.55	95.10	63.70	69.85	83.75	87.80	69.05	83.80	56.65	74.05
19	33.90	53.75	78.00	84.00	99.60	66.75	73.00	87.85	91.90	72.20	87.50	59.30	77.45
20	35.05	55.85	81.15	87.50	104.10	69.85	76.15	91.95	96.00	75.35	91.15	61.90	80.90
21	36.20	57.95	84.30	90.95	108.55	72.90	79.30	96.05	100.15	78.50	94.85	64.55	84.30
22	37.35	60.10	87.50	94.45	113.05	75.95	82.50	100.20	104.25	81.70	98.55	67.20	87.75
23	38.50	62.20	90.65	97.90	117.50	79.00	85.65	104.30	108.35	84.85	102.25	69.85	91.15
24	39.70	64.30	93.80	101.40	122.00	82.05	88.80	108.40	112.45	88.00	105.95	72.45	94.60
25	40.85	66.40	96.95	104.85	126.50	85.10	91.95	112.50	116.55	91.15	109.60	75.10	98.00
26	42.00	68.50	100.15	108.35	130.95	88.15	95.10	116.65	120.70	94.35	113.30	77.75	101.45
27	43.15	70.60	103.30	111.85	135.45	91.20	98.30	120.75	124.80	97.50	117.00	80.35	104.85
28	44.30	72.75	106.45	115.30	139.90	94.30	101.45	124.85	128.90	100.65	120.70	83.00	108.30
29	45.50	74.85	109.60	118.80	144.40	97.35	104.60	128.95	133.00	103.80	124.35	85.65	111.70
30	46.65	76.95	112.80	122.25	148.90	100.40	107.75	133.05	137.15	107.00	128.05	88.25	115.15
31	47.80	79.05	115.95	125.75	153.35	103.45	110.95	137.20	141.25	110.15	131.75	90.90	118.60
32	48.95	81.15	119.10	129.20	157.85	106.50	114.10	141.30	145.35	113.30	135.45	93.55	122.00
33	50.10	83.25	122.25	132.70	162.30	109.55	117.25	145.40	149.45	116.45	139.15	96.20	125.45
34	51.30	85.35	125.45	136.20	166.80	112.60	120.40	149.50	153.55	119.65	142.80	98.80	128.85
35	52.45	87.50	128.60	139.65	171.30	115.70	123.60	153.60	157.70	122.80	146.50	101.45	132.30
36	53.60	89.60	131.75	143.15	175.75	118.75	126.75	157.75	161.80	125.95	150.20	104.10	135.70
37	54.75	91.70	134.90	146.60	180.25	121.80	129.90	161.85	165.90	129.10	153.90	106.70	139.15
38	55.90	93.80	138.05	150.10	184.70	124.85	133.05	165.95	170.00	132.30	157.55	109.35	142.55
39	57.05	95.90	141.25	153.55	189.20	127.90	136.25	170.05	174.10	135.45	161.25	112.00	146.00
40	58.25	98.00	144.40	157.05	193.65	130.95	139.40	174.15	178.25	138.60	164.95	114.60	149.40
41	59.40	100.15	147.55	160.50	198.15	134.00	142.55	178.30	182.35	141.75	168.65	117.25	152.85
42	60.55	102.25	150.70	164.00	202.65	137.05	145.70	182.40	186.45	144.95	172.35	119.90	156.25
43	61.70	104.35	153.90	167.50	207.10	140.15	186.50	190.55	148.10	176.00	122.55	159.70	148.90
44	62.85	106.45	157.05	170.95	211.60	143.20	152.05	190.60	194.65	151.25	179.70	125.15	163.10
45	64.05	N/A	160.20	174.45	216.05	146.25	155.20	194.75	198.80	154.40	183.40	127.80	166.55
46	65.20	N/A	163.35	177.90	220.55	149.30	158.35	198.85	202.90	157.55	187.10	130.45	169.95
47	66.35	N/A	166.55	181.40	225.05	152.35	161.55	202.95	207.00	160.75	190.75	133.05	173.40
48	67.50	N/A	169.70	184.85	229.50	155.40	164.70	207.05	211.10	163.90	194.45	135.70	176.80
49	68.65	N/A	172.85	188.35	234.00	158.45	167.85	211.15	215.25	167.05	198.15	138.35	180.25

AIRMAIL PARCEL POST—Continued

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12	Group 13
50	69.85	N/A	176.00	191.85	238.45	161.55	171.00	215.30	219.35	170.20	201.85	140.95	183.65
51	71.00	N/A	179.20	195.30	242.95	164.60	174.15	219.40	223.45	173.40	205.55	143.60	187.10
52	72.15	N/A	182.35	198.80	247.45	167.65	177.35	223.50	227.55	176.55	209.20	146.25	190.50
53	73.30	N/A	185.50	202.25	251.90	170.70	180.50	227.60	231.65	179.70	212.90	148.90	193.95
54	74.45	N/A	188.65	205.75	256.40	173.75	183.65	231.70	235.80	182.85	216.60	151.50	197.35
55	75.60	N/A	191.85	209.20	260.85	176.80	186.80	235.85	239.90	186.05	220.30	154.15	200.80
56	76.80	N/A	195.00	212.70	265.35	179.85	190.00	239.95	244.00	189.20	224.00	156.80	204.20
57	77.95	N/A	198.15	216.20	269.80	182.90	193.15	244.05	248.10	192.35	227.65	159.40	207.65
58	79.10	N/A	201.30	219.65	274.30	186.00	196.30	248.15	252.20	195.50	231.35	162.05	211.05
59	80.25	N/A	204.50	223.15	278.80	189.05	199.45	252.25	256.35	198.70	235.05	164.70	214.50
60	81.40	N/A	207.65	226.60	283.25	192.10	202.65	256.40	260.45	201.85	238.75	167.30	217.90
61	82.60	N/A	210.80	230.10	287.75	195.15	205.80	260.50	264.55	205.00	242.40	169.95	221.35
62	83.75	N/A	213.95	233.55	292.20	198.20	208.95	264.60	268.65	208.15	246.10	172.60	224.75
63	84.90	N/A	217.10	237.05	296.70	201.25	212.10	268.70	272.80	211.35	249.80	175.25	228.20
64	86.05	N/A	220.30	240.50	301.20	204.30	215.30	272.85	276.90	214.50	253.50	177.85	231.60
65	87.20	N/A	223.45	244.00	305.65	207.35	218.45	276.95	281.00	217.65	257.20	180.50	235.05
66	88.40	N/A	226.60	247.50	310.15	210.45	221.60	281.05	285.10	220.80	260.85	183.15	238.45
67	N/A	N/A	N/A	N/A	314.60	213.50	224.75	285.15	289.20	224.00	264.55	185.75	241.90
68	N/A	N/A	N/A	N/A	319.10	216.55	227.95	289.25	293.35	227.15	268.25	188.40	245.30
69	N/A	N/A	N/A	N/A	323.60	219.60	231.10	293.40	297.45	230.30	271.95	191.05	248.75
70	N/A	N/A	N/A	N/A	328.05	222.65	234.25	297.50	301.55	233.45	275.60	193.65	252.15

INTERNATIONAL PRIORITY AIRMAIL

Rate group	Per piece	Drop shipment per pound	Full service per pound
1 (Canada)	$0.30	$2.75	$3.75
2 (Mexico)	0.13	4.85	5.85
3	0.27	4.35	5.35
4	0.26	5.80	6.80
5	0.13	5.10	6.10
6	0.13	5.00	6.00
7	0.13	6.60	7.60
8	0.13	7.65	8.65
World wide	0.21	7.40	8.40

AIRMAIL M-BAGS

Weight not over (lbs.)	Rate groups [1]				
	1	2	3	4	5
11	$17.60	$22.55	$29.15	$40.70	$40.70
Add'l Weight *	1.60	2.05	2.65	3.70	3.70

[1] Rate Groups: See the ''Letter-post'' rate group column in the Country Listing.
* Each additional pound or fraction of a pound, up to a maximum weight of 66 pounds.

ECONOMY LETTER-POST

Weight not over (ozs.)	Group 1	Group 2	Group 3	Group 4	Group 5
16	$2.85	$5.15	$4.10	$4.25	$6.00
20	4.25	6.10	4.85	4.95	6.90
24	4.80	7.00	5.55	5.65	7.85
28	5.30	7.90	6.20	6.30	8.85
32	5.90	8.85	6.85	7.00	9.80
36	6.30	9.60	7.50	7.65	10.60
40	6.75	10.40	8.15	8.25	11.35
44	7.15	11.15	8.80	8.90	12.15
48	7.60	11.90	9.45	9.55	12.95
52	8.00	12.70	10.10	10.15	13.75
56	8.45	13.45	10.75	10.80	14.50
60	8.85	14.20	11.40	11.45	15.30
64	9.30	15.00	12.05	12.05	15.75

INTERNATIONAL SURFACE AIR LIFT

Rate group	Per piece	Full service per pound	M-Bag full service	Direct ship per pound	M-Bag direct ship	Drop ship per pound	M-Bag drop ship
1 (Canada)	$0.30	$3.15	$1.60	$2.65	$1.60	$2.15	$1.50
2 (Mexico)	0.13	4.55	1.70	4.05	1.70	3.55	1.60
3	0.26	3.55	1.85	3.05	1.85	2.55	1.60
4	0.26	3.90	2.65	3.40	2.65	2.90	2.65
5	0.13	4.85	2.35	4.35	2.35	3.85	2.10
6	0.13	4.75	2.35	4.25	2.35	3.75	2.10
7	0.13	4.85	2.60	4.35	2.60	3.85	2.35
8	0.13	6.80	3.40	6.30	3.40	5.80	3.15

PUBLISHERS' PERIODICALS

Weight not over (ozs.)	Rate groups [1]				
	1	2	3	4	5
1	$0.61	$0.80	$0.70	$0.68	$0.81
2	0.69	1.01	0.82	0.81	1.00
3	0.77	1.21	0.95	0.93	1.19
4	0.85	1.41	1.08	1.06	1.38
5	0.93	1.61	1.21	1.19	1.57
6	1.01	1.81	1.33	1.31	1.76
7	1.09	2.01	1.46	1.44	1.94
8	1.17	2.21	1.59	1.56	2.13
12	1.55	2.85	2.10	2.06	2.73
16	1.93	3.50	2.61	2.57	3.32
20	2.15	4.14	3.12	3.07	3.92
24	2.36	4.78	3.63	3.57	4.51
28	2.58	5.43	4.14	4.07	5.10
32	2.79	6.07	4.65	4.57	5.70
36	5.22	6.71	5.16	5.07	6.29
40	5.39	7.36	5.67	5.57	6.89
44	5.55	8.00	6.18	6.08	7.48
48	5.71	8.64	6.69	6.58	8.07
52	5.93	9.29	7.20	7.08	8.67
56	6.14	9.93	7.71	7.58	9.26
60	6.36	10.57	8.22	8.08	9.86
64	6.57	11.22	8.73	8.58	10.45

[1] Rate Groups: See the "Letter-post" rate group column in the Country Listing.

Note.—$0.25 per pound discount for drop shipments tendered at the New Jersey International and Bulk Mail Center.

BOOKS AND SHEET MUSIC

Weight not over (ozs.)	Rate groups [1]				
	1	2	3	4	5
0.5	$2.30	$3.00	$2.80	$2.75	$3.35
1	2.30	3.00	2.80	2.75	3.35
2	2.30	3.00	2.80	2.75	3.35
3	2.30	3.00	2.80	2.75	3.35
4	2.30	3.00	2.80	2.75	3.35
5	2.30	3.00	2.80	2.75	3.35
6	2.30	3.00	2.80	2.75	3.35
7	2.30	3.00	2.80	2.75	3.35
8	2.30	3.00	2.80	2.75	3.35
12	2.30	3.00	2.80	2.75	3.35
16	2.30	3.00	2.80	2.75	3.35
20	2.50	3.60	3.35	3.25	4.00
24	2.70	4.15	3.95	3.80	4.65
28	2.90	4.75	4.50	4.30	5.30
32	3.10	5.25	5.00	4.85	5.95
36	4.05	5.75	5.40	5.25	6.45
40	4.95	6.20	5.80	5.65	7.00
44	5.85	6.70	6.20	6.05	7.55
48	6.75	7.10	6.55	6.45	7.95
52	7.00	8.05	6.95	6.85	8.50
56	7.30	9.00	7.40	7.25	9.05
60	7.55	9.95	7.80	7.75	9.55

BOOKS AND SHEET MUSIC—Continued

Weight not over (ozs.)	Rate groups [1]				
	1	2	3	4	5
64	7.85	10.85	8.20	8.15	10.00

[1] Rate Groups: See the "Letter-post" rate group column in the Country Listing.

ECONOMY PARCEL POST

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12
5	$16.00	$20.50	$24.25	$24.50	$22.50	$19.25	$23.25	$22.75	$30.25	$23.00	$27.75	$21.25
6	16.60	21.85	26.35	26.35	24.00	20.40	25.30	24.05	32.60	24.75	30.30	23.20
7	17.40	23.20	28.45	27.65	25.55	21.55	27.40	25.40	34.95	26.35	32.65	25.05
8	18.20	24.25	30.55	29.25	27.15	22.70	29.50	26.75	37.25	28.20	35.05	26.90
9	18.70	25.30	32.65	30.55	28.70	23.85	31.60	28.15	39.60	30.55	37.40	28.70
10	19.25	26.10	34.50	31.90	30.30	25.05	33.75	29.60	41.90	33.75	39.80	30.45
11	19.70	26.90	36.30	33.00	31.60	26.05	35.40	31.00	43.90	35.20	41.95	32.20
12	20.20	27.65	38.10	34.10	32.95	27.05	37.10	32.35	45.90	36.70	44.10	33.95
13	20.65	28.45	39.90	35.20	34.25	28.05	38.80	33.75	47.90	38.15	46.25	35.70
14	21.15	29.25	41.70	36.30	35.55	29.05	40.45	35.10	49.90	39.65	48.45	37.40
15	21.60	30.05	43.50	37.40	36.90	30.05	42.15	36.45	51.90	41.10	50.60	39.15
16	22.10	30.85	45.25	38.50	38.20	31.05	43.85	37.85	53.90	42.60	52.75	40.90
17	22.55	31.60	47.05	39.65	39.50	32.05	45.55	39.20	55.90	44.05	54.90	42.65
18	23.05	32.40	48.85	40.75	40.85	33.05	47.20	40.60	57.90	45.55	57.05	44.35
19	23.50	33.20	50.65	41.85	42.15	34.05	48.90	41.95	59.90	47.00	59.25	46.10
20	24.00	34.00	52.45	42.95	43.50	35.05	50.60	43.30	61.90	48.50	61.40	47.85
21	24.55	34.75	54.10	43.95	44.70	36.00	52.30	44.70	63.70	49.80	63.40	49.40
22	25.15	35.45	55.80	44.95	45.90	36.95	53.95	46.05	65.50	51.10	65.40	50.90
23	25.70	36.20	57.50	45.95	47.10	37.90	55.65	47.45	67.30	52.45	67.40	52.45
24	26.30	36.95	59.20	46.95	48.35	38.85	57.35	48.80	69.10	53.75	69.40	53.95
25	26.90	37.70	60.85	47.95	49.55	39.80	59.00	50.15	70.90	55.05	71.40	55.50
26	27.45	38.40	62.55	48.95	50.75	40.75	60.70	51.55	72.65	56.40	73.40	57.00
27	28.05	39.15	64.25	49.95	51.95	41.70	62.40	52.90	74.45	57.70	75.40	58.55
28	28.60	39.90	65.95	50.95	53.15	42.65	64.10	54.30	76.25	59.00	77.40	60.10
29	29.20	40.65	67.60	51.95	54.40	43.60	65.75	55.65	78.05	60.35	79.40	61.60
30	29.80	41.35	69.30	52.95	55.60	44.55	67.45	57.00	79.85	61.65	81.40	63.15
31	30.35	42.10	70.90	53.90	56.75	45.45	69.05	58.40	81.60	63.00	83.25	64.60
32	30.95	42.85	72.45	54.85	57.90	46.30	70.60	59.75	83.30	64.30	85.10	66.10
33	31.50	43.60	74.05	55.80	59.10	47.20	72.20	61.15	85.05	65.60	86.95	67.55
34	32.10	44.30	75.60	56.75	60.25	48.10	73.80	62.50	86.80	66.95	88.80	69.05
35	32.65	45.05	77.20	57.70	61.40	49.00	75.35	63.85	88.55	68.25	90.65	70.50
36	33.25	45.80	78.80	58.65	62.55	49.90	76.95	65.25	90.30	69.55	92.50	72.00
37	33.85	46.55	80.35	59.60	63.70	50.80	78.50	66.60	92.00	70.90	94.35	73.45
38	34.40	47.25	81.95	60.55	64.85	51.70	80.10	68.00	93.75	72.20	96.20	74.95
39	35.00	48.00	83.55	61.50	66.05	52.60	81.70	69.35	95.50	73.50	98.00	76.40
40	35.55	48.75	85.10	62.45	67.20	53.50	83.25	70.70	97.25	74.85	99.85	77.90
41	36.15	49.50	86.70	63.40	68.35	54.40	84.85	72.10	98.65	76.15	101.70	79.35
42	36.75	50.20	88.25	64.35	69.50	55.30	86.45	73.45	100.10	77.45	103.55	80.85
43	37.30	50.95	89.85	65.30	70.65	56.20	88.00	74.85	101.50	78.80	105.40	82.30
44	37.90	51.70	91.45	66.25	71.85	57.05	89.60	76.20	102.90	80.10	107.25	83.80
45	38.45	N/A	93.00	67.20	73.00	57.95	91.15	77.55	104.35	81.40	109.10	85.25
46	39.05	N/A	94.60	68.15	74.15	58.85	92.75	78.95	105.75	82.75	110.95	86.75
47	39.65	N/A	96.20	69.10	75.30	59.75	94.35	80.30	107.20	84.05	112.80	88.20
48	40.20	N/A	97.75	70.05	76.45	60.65	95.90	81.70	108.60	85.35	114.60	89.70
49	40.80	N/A	99.35	71.00	77.65	61.55	97.50	83.05	110.05	86.70	116.45	91.15
50	41.35	N/A	100.90	71.95	78.80	62.45	99.10	84.45	111.45	88.00	118.30	92.65
51	41.95	N/A	102.50	72.90	79.95	63.35	100.65	85.80	112.90	89.35	120.15	94.10
52	42.55	N/A	104.10	73.85	81.10	64.25	102.25	87.15	114.30	90.65	122.00	95.60
53	43.10	N/A	105.65	74.80	82.25	65.15	103.80	88.55	115.75	91.95	123.85	97.05
54	43.70	N/A	107.25	75.75	83.40	66.05	105.40	89.90	117.15	93.30	125.70	98.55
55	44.25	N/A	108.85	76.70	84.60	66.95	107.00	91.30	118.60	94.60	127.55	100.00
56	44.85	N/A	110.40	77.65	85.75	67.80	108.55	92.65	120.00	95.90	129.40	101.50
57	45.45	N/A	112.00	78.60	86.90	68.70	110.15	94.00	121.40	97.25	131.20	103.00
58	46.00	N/A	113.55	79.50	88.05	69.60	111.70	95.40	122.85	98.55	133.05	104.45
59	46.60	N/A	115.15	80.45	89.20	70.50	113.30	96.75	124.25	99.85	134.90	105.95
60	47.15	N/A	116.75	81.40	90.40	71.40	114.90	98.15	125.70	101.20	136.75	107.40
61	47.75	N/A	118.30	82.35	91.55	72.30	116.45	99.50	127.10	102.50	138.60	108.90
62	48.35	N/A	119.90	83.30	92.70	73.20	118.05	100.85	128.55	103.80	140.45	110.35
63	48.90	N/A	121.45	84.25	93.85	74.10	119.65	102.25	129.95	105.15	142.30	111.85
64	49.50	N/A	123.05	85.20	95.00	75.00	121.20	103.60	131.40	106.45	144.15	113.30
65	50.05	N/A	124.65	86.15	96.20	75.90	122.80	105.00	132.80	107.75	146.00	114.80

ECONOMY PARCEL POST—Continued

Weight not over (lbs.)	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12
66	50.65	N/A	126.20	87.10	97.35	76.80	124.35	106.35	134.25	109.10	147.80	116.25
67	N/A	N/A	N/A	N/A	98.50	77.70	125.95	107.70	135.65	110.40	149.65	117.75
68	N/A	N/A	N/A	N/A	99.65	78.60	127.55	109.10	137.05	111.70	151.50	119.20
69	N/A	N/A	N/A	N/A	100.80	79.45	129.10	110.45	138.50	113.05	153.35	120.70
70	N/A	N/A	N/A	N/A	101.95	80.35	130.70	111.85	139.90	114.35	155.20	122.15

ECONOMY (SURFACE) M-BAGS

Type and weight of mailing	Rate groups [1]				
	1	2	3	4	5
Regular:					
Weight not over 11 lbs	$14.30	$14.85	$17.05	$17.60	$17.60
Additional weight *	1.30	1.35	1.55	1.60	1.60
Books and Sheet Music and Publishers' Periodicals:					
Weight not over 11 lbs	11.00	9.35	10.45	11.55	11.55
Additional weight *	1.00	0.85	0.95	1.05	1.05

* Each additional pound or fraction of a pound, up to a maximum weight of 66 pounds.
[1] Rate Groups: See the "Letter-post" rate group column in the Country Listing.

COUNTRY RATE GROUP LIST

Country	EMS	Airmail parcel post	Economy parcel post	Letter-post	GXG	IPA & ISAL [1]
Afghanistan	.....	7	7	5	7	8
Albania	6	7	7	5	8	5
Algeria	11	10	11	5	.....	8
Andorra	7	7	6	3	6	3
Angola	11	10	11	5	8	8
Anguilla	12	12	12	5	3	6
Antigua & Barbuda	.....	12	12	5	3	6
Argentina	12	13	12	5	5	6
Armenia	7	7	7	5	8	8
Aruba	12	12	12	5	3	6
Ascension	.....	.....	11	5	.....	5
Australia	5	5	8	4	4	4
Austria	7	7	6	5	6	3
Azerbaijan	6	7	7	5	8	8
Bahamas	12	12	12	5	3	6
Bahrain	11	10	.....	5	7	8
Bangladesh	9	8	8	5	7	8
Barbados	12	12	12	5	3	6
Belarus	6	6	7	5	8	5
Belgium	7	7	6	3	3	3
Belize	12	12	12	5	5	6
Benin	11	10	10	5	8	8
Bermuda	12	13	12	5	3	6
Bhutan	8	9	9	5	5	8
Bolivia	12	13	12	5	5	6
Bosnia-Herzegovina	6	6	6	5	8	5
Botswana	10	11	11	5	8	8
Brazil	12	13	12	5	5	6
British Virgin Islands	.....	12	12	5	3	6
Brunei Darussalam	8	8	8	5	8	7
Bulgaria	6	6	7	5	8	5
Burkina Faso	10	10	11	5	8	8
Burma (Myanmar)	.....	6	6	5	.....	8
Burundi	11	11	11	5	8	8
Cambodia	8	8	.....	5	8	7
Cameroon	10	11	11	5	8	8
Canada	1	1	1	1	1	1
Cape Verde	11	10	11	5	8	8
Cayman Islands	12	12	12	5	3	6
Central African Republic	11	11	11	5	.....	8
Chad	10	10	.....	5	8	8
Chile	12	13	12	5	5	6
China	5	5	5	5	4	7

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Airmail parcel post	Economy parcel post	Letter-post	GXG	IPA & ISAL [1]
Colombia	12	12	12	5	5	6
Comoros	.....	10	10	5	.....	8
Congo, Democratic Republic of the	10	11	11	5	8	8
Congo, Republic of the	11	10	10	5	8	8
Costa Rica	12	12	12	5	5	6
Cote d'Ivoire (Ivory Coast)	10	11	11	5	8	8
Croatia	6	6	6	5	8	5
Cuba	.....	.....	.....	5	.....	6
Cyprus	6	6	6	5	7	8
Czech Republic	7	6	7	5	8	5
Denmark	7	7	6	3	6	3
Djibouti	11	10	10	5	8	8
Dominica	12	12	12	5	3	6
Dominican Republic	12	12	12	5	3	6
Ecuador	12	13	12	5	5	6
Egypt	11	11	11	5	7	8
El Salvador	12	12	12	5	5	6
Equatorial Guinea	10	10	10	5	8	8
Eritrea	10	11	11	5	8	8
Estonia	6	7	7	5	8	5
Ethiopia	10	10	10	5	8	8
Falkland Islands	.....	.....	12	5	.....	6
Faroe Islands	7	6	6	3	6	5
Fiji	8	8	8	5	5	7
Finland	7	7	6	3	6	3
France	7	7	6	3	3	3
French Guiana	12	13	12	5	5	6
French Polynesia	9	9	9	5	8	7
Gabon	11	10	11	5	8	8
Gambia	.....	11	11	5	8	8
Georgia, Republic of	7	7	7	5	8	8
Germany	7	7	6	3	3	3
Ghana	10	11	11	5	8	8
Gibraltar	.....	7	6	3	6	3
Great Britain & Northern Ireland	3	3	3	3	3	3
Greece	7	7	6	3	6	3
Greenland	.....	6	6	3	6	3
Grenada	12	12	12	5	3	6
Guadeloupe	12	13	12	5	3	6
Guatemala	12	12	12	5	5	6
Guinea	10	10	10	5	8	8
Guinea-Bissau	11	11	.....	5	.....	8
Guyana	12	12	12	5	5	6
Haiti	12	12	12	5	3	6
Honduras	12	13	12	5	5	6
Hong Kong	5	5	8	5	3	7
Hungary	7	6	6	5	8	5
Iceland	7	6	6	3	6	3
India	8	9	8	5	7	8
Indonesia	8	8	8	5	4	7
Iran	.....	11	11	5	.....	8
Iraq	11	11	11	5	7	8
Ireland (Eire)	7	7	6	3	3	3
Israel	10	10	10	3	7	3
Italy	7	7	6	3	3	3
Jamaica	12	12	12	5	3	6
Japan	4	4	4	4	3	4
Jordan	10	10	10	5	7	8
Kazakhstan	6	6	7	5	8	8
Kenya	10	10	10	5	8	8
Kiribati	.....	8	8	5	.....	7
Korea, Democratic People's Republic of (North)	.....	.....	.....	5	.....	7
Korea, Republic of (South)	5	5	8	5	4	7
Kuwait	11	10	.....	5	7	8
Kyrgyzstan	6	6	7	5	8	5
Laos	9	9	9	5	8	7
Latvia	7	6	6	5	8	5
Lebanon	.....	10	.....	5	7	8
Lesotho	11	11	11	5	8	8
Liberia	10	10	.....	5	8	8

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Airmail parcel post	Economy parcel post	Letter-post	GXG	IPA & ISAL [1]
Libya	.....	7	7	5	.....	8
Liechtenstein	7	7	6	3	6	3
Lithuania	6	6	7	5	8	5
Luxembourg	7	7	6	3	3	3
Macao	8	9	9	5	3	5
Macedonia, Republic of	7	6	7	5	8	5
Madagascar	10	11	11	5	8	8
Malawi	10	11	11	5	8	8
Malaysia	8	8	8	5	4	7
Maldives	9	9	9	5	8	8
Mali	10	10	11	5	8	8
Malta	7	7	7	5	6	8
Marshall Islands [2]	13	14	13	6	.....	3
Martinique	12	13	12	5	3	6
Mauritania	10	10	11	5	8	8
Mauritius	10	10	10	5	8	8
Mexico	2	2	2	2	2	2
Micronesia, Federated States of [2]	13	14	13	6	.....	3
Moldova	6	7	7	5	8	8
Mongolia	9	9	9	5	8	7
Montserrat	.....	8	8	5	3	6
Morocco	11	10	11	5	8	8
Mozambique	10	11	11	5	8	8
Namibia	11	11	11	5	8	8
Nauru	8	8	8	5	.....	7
Nepal	8	9	9	5	8	7
Netherlands	7	7	6	3	3	3
Netherlands Antilles	12	12	12	5	3	6
New Caledonia	9	9	9	5	5	7
New Zealand	8	8	8	4	4	4
Nicaragua	12	12	12	5	5	6
Niger	10	10	10	5	8	8
Nigeria	11	10	10	5	8	8
Norway	7	7	6	3	6	3
Oman	11	10	.....	5	7	8
Pakistan	8	9	8	5	7	8
Panama	12	12	12	5	5	6
Papua New Guinea	8	9	9	5	5	7
Paraguay	12	13	12	5	5	6
Peru	12	13	12	5	5	6
Philippines	8	9	8	5	4	7
Pitcairn Island	.....	8	8	5	.....	7
Poland	6	6	6	5	8	5
Portugal	7	7	7	3	6	3
Qatar	11	10	.....	5	7	8
Reunion	.....	13	12	5	8	8
Romania	6	7	7	5	8	5
Russia	7	7	7	5	8	5
Rwanda	10	10	11	5	8	8
St. Christopher (St. Kitts) & Nevis	12	12	12	5	3	6
Saint Helena	.....	11	11	5	.....	8
Saint Lucia	12	12	12	5	3	6
Saint Pierre & Miquelon	.....	6	6	5	.....	6
Saint Vincent & Grenadines	12	13	12	5	3	6
San Marino	7	7	8	3	3	3
Sao Tome & Principe	.....	10	10	5	.....	5
Saudi Arabia	10	10	10	5	7	8
Senegal	11	10	10	5	8	8
Serbia-Montenegro (Yugoslavia)	7	7	7	5	8	5
Seychelles	10	10	11	5	8	8
Sierra Leone	10	10	.....	5	.....	8
Singapore	8	8	8	5	3	7
Slovak Republic (Slovakia)	7	7	6	5	8	5
Slovenia	7	6	7	5	8	5
Solomon Islands	8	8	8	5	.....	7
Somalia	10	10	10	5	.....	8
South Africa	11	11	10	5	8	8
Spain	7	7	6	3	6	3
Sri Lanka	8	9	8	5	7	8
Sudan	10	11	11	5	.....	8

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Airmail parcel post	Economy parcel post	Letter-post	GXG	IPA & ISAL [1]
Suriname	.....	12	12	5	5	6
Swaziland	11	10	10	5	8	8
Sweden	7	7	7	3	6	3
Switzerland	7	7	6	3	6	3
Syrian Arab Republic (Syria)	10	10	10	5	.....	8
Taiwan	8	9	8	5	3	7
Tajikistan	7	6	6	5	.....	8
Tanzania	10	10	10	5	8	8
Thailand	9	8	8	5	4	7
Togo	11	10	10	5	8	8
Tonga	.....	8	8	5	.....	7
Trinidad & Tobago	12	12	12	5	3	6
Tristan da Cunha	.....	10	11	5	.....	8
Tunisia	11	10	10	5	8	8
Turkey	10	10	10	5	7	5
Turkmenistan	7	7	7	5	8	5
Turks & Caicos Islands	.....	12	12	5	3	6
Tuvalu	.....	8	8	5	8	7
Uganda	10	10	11	5	8	8
Ukraine	7	7	7	5	8	8
United Arab Emirates	10	10	10	5	7	8
Uruguay	12	13	12	5	5	6
Uzbekistan	.....	7	7	5	8	8
Vanuatu	8	8	8	5	5	7
Vatican City	7	7	6	3	3	3
Venezuela	12	12	12	5	5	6
Vietnam	8	9	8	5	4	7
Wallis & Futuna Islands	.....	9	9	5	4	7
Western Samoa	8	8	8	5	.....	7
Yemen	10	10	11	5	7	8
Zambia	10	10	11	5	8	8
Zimbabwe	11	11	11	5	8	8

[1] ISAL service not available to all countries. See Individual Country Listings for availability.

[2] Rate groups appear in this table for Republic of the Marshall Islands and Federated States of Micronesia for EMS, Airmail Parcel Post, Economy Parcel Post, and Air Letter-post; see ''International Mail: Republic of the Marshall Islands and Federated States of Micronesia'' elsewhere in this issue of the **Federal Register** for corresponding rates.

INSURANCE

[In dollars]

Parcel post indemnity not over	Canada	All other countries
50	1.35	1.95
100	2.30	2.75
200	3.35	3.80
300	4.40	4.85
400	5.45	5.90
500	6.50	6.95
600	7.55	8.00
675	8.60	N/A
700	N/A	9.05
Add'l Indemnity*	N/A	1.05

*Each additional $100 or fraction. See individual country listings for maximum indemnity.

[In dollars]

Global express guaranteed indemnity not over (U.S. $)	All countries
100	No fee.
Add'l Indemnity*	0.75

*Each additional $100 or fraction. See individual country listings for maximum indemnity.

SPECIAL SERVICES FEES

Description	Fee
International Postal Money Orders	$3.45
International Reply Coupons	1.85
International Business Reply Card	0.85
International Business Reply Envelope (up to 2 oz)	1.25
Customs Clearance and Delivery Fee	4.75
Certificate of Mailing	0.95
Recorded Delivery	2.40
Express Mail Merchandise Insurance over $100	1.05
Restricted Delivery	3.70
Registered Mail	7.90
Return Receipt	1.85
Pickup Fee	13.25

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–23007 Filed 11–22–05; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 20

International Mail: Republic of the Marshall Islands and Federated States of Micronesia

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Under an agreement negotiated by the United States government with the Republic of the Marshall Islands and the Federated States of Micronesia, mail destined to those two countries will now use the international rate schedules. This final rule amends the *International Mail Manual* (IMM) to include the Republic of the Marshall Islands and the Federated States of Micronesia in all international products and services, and add them to the individual country listings.

EFFECTIVE DATE: 12:01 a.m., Sunday, January 8, 2006.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 202–268–7262, or Thomas P. Philson at 202–268–7355.

SUPPLEMENTARY INFORMATION: On September 15, 2005, the Postal Service™ published in the **Federal Register** (70 FR 54510) a notice of proposed rulemaking to adopt international rate schedules for the Republic of the Marshall Islands and the Federated States of Micronesia. This change from charging domestic rates for mail to these countries is based on an agreement negotiated between the United States and the two former United States Trust Territories.

We requested comments on our proposal by October 17, 2005, and received two responses: one from a private individual, and one from the Republic of the Marshall Islands.

The private individual asked why the transitioned rate for airmail letter-post is less than the nontransitioned rate for aerogrammes. He envisions situations where customers might purchase aerogrammes at the full rate and alter them into airmail letter-post to secure the lower price. His solution is to print another aerogramme at the letter-post rate. He also asked if there are similar plans to change to international rates for the Republic of Palau and if *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) and the *International Mail Manual* (IMM) will be amended to cover the transfer of the Republic of the Marshall Islands and the Federated States of Micronesia to the international rate schedules. Finally, he expressed concern that certain special services are not initially available for the two countries.

First, no agreement has been negotiated with the Republic of Palau, and discussion of an agreement is outside the scope of this rule. We will revise the DMM to remove references to the Republic of the Marshall Islands and the Federated States of Micronesia and amend the IMM to add country pages for these two listings.

As for the possibility that mailers may alter aerogrammes to receive the lower rate, we agree that this possibility exists. However, due to the relatively low volume of aerogrammes worldwide and the relatively low potential cost savings on each altered aerogramme, we do not believe this situation will be common or will result in any serious revenue loss. In fact, the letter-post rate to Canada and Mexico is currently below the aerogramme rate, and this rate relationship has not caused the problem noted by the private individual. In addition, printing and stocking two aerogrammes with different postage rates would be costly. We note that enclosures are not permitted in aerogrammes. We have been advised by the private individual that mailers may try to send aerogrammes with enclosures, and we will monitor the situation and take action if necessary.

Under the conditions of the agreement between the United States and the governments of the Republic of the Marshall Islands and the Federated States of Micronesia, certain special services will be discontinued, including money orders, Registered Mail™ service, collect on delivery (COD), and recorded delivery. These special services may be offered in the future but would require a negotiated agreement. We note that there are other countries where international special services are not available because there are no agreements with those postal administrations to allow for those services.

The comments from the Republic of the Marshall Islands centered on the timing of the implementation of the agreement and concerns about possible burdens and adverse effects that may be caused by the implementation. The comments mainly reflect previous arguments against adopting international rates. During the negotiation of the agreement, we reached a compromise that mail going to the Republic of the Marshall Islands would not be subject to international rates and conditions until 2006 and the change would be phased in over a period of at least five years. The rates that we adopt comply with that agreement.

For all international services with domestic equivalents, rates will be phased in using the difference between the domestic rates and the international rates. These services include Express Mail®, Air Letters, Postcards, Publishers' Periodicals, Air Parcel Post, Economy Parcel Post, and Books and Sheet Music.

For international services without domestic equivalents, we derived phased rates by selecting a lower rate country group. After the phasing period, the Republic of the Marshall Islands and the Federated States of Micronesia will be included in country group 5 for Economy Letter Post, Airmail M-Bags, and Economy M-Bags and country group 7 for International Priority Airmail (IPA). To phase in these rates over at least 5 years, the Republic of the Marshall Islands and the Federated States of Micronesia have been assigned to country group 3 for those services during the first phase. Aerogramme service does not have a domestic equivalent; however, there is only one worldwide rate available.

Initially the following three international services will not be offered for mail destined to the Republic of the Marshall Islands and the Federated States of Micronesia: Global Express Guaranteed® (GXG™), Global Priority Mail® (GPM), and International Surface Air Lift (ISAL). These services require special transportation arrangements and may be offered in the future.

After reviewing and considering the comments, we adopt the following changes to the *International Mail Manual* (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the International Mail Manual which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 20).

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Amend the *International Mail Manual* (IMM) as follows.

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

213 Service Areas

* * * * *

213.2 Destinating Countries and Rate Groups

* * * * *

[Revise the Destinating Countries and Rate Groups table by adding ''Marshall Islands, Republic of'' and ''Micronesia, Federated States of'' as follows:]

Country	Document service rate group	Non-document service rate group
* * * * * * *	*	*
Marshall Islands, Republic of	No Service ...	No Service.
* * * * * * *	*	*
Micronesia, Federated States of	No Service ...	No Service.
* * * * * * *	*	*

280 Parcel Post

* * * * *

283 Weight and Size Limits

* * * * *

283.2 Size Limits

* * * * *

283.23 Exceptional Size Limits

* * * * *

[Revise item b by adding the Republic of the Marshall Islands and the Federated States of Micronesia to read as follows:]

* * * * *

b. Maximum length: 60 inches.

Maximum length and girth combined: 108 inches.

Azerbaijan

Great Britain and Northern Ireland

Japan

Macao

Marshall Islands, Republic of

Micronesia, Federated States of

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail Service

* * * * *

292.4 Preparation Requirements for Individual Items

* * * * *

292.44 Sortation Requirements for IPA

* * * * *

292.442 Presorted Mail

* * * * *

Exhibit 292.442 Foreign Exchange Office and Country Rate Groups

[Revise the Foreign Exchange Office and Country Rate Groups table by adding ''Marshall Islands, Republic of'' and ''Micronesia, Federated States of'' as follows:]

Rate group	Country	3-Letter exchange office code	Exchange office
* * * * * * *		*	*
3	Marshall Islands, Republic of	MAJ	MAJURO.
		EBE	EBEYE.
* * * * * * *		*	*
3	Micronesia, Federated States of	PNI	POHNPEI.
		KSA	KOSRAE.
		TKK	TRUK.
* * * * * * *		*	*

294 Publishers' Periodicals

* * * * *

294.4 Makeup Requirements for Publishers' Periodicals

* * * * *

294.42 Sacking and Labeling

* * * * *

Exhibit 294.42 Publishers' Periodicals—All Countries (Except Canada) Labeling, Routing, and Rate Group Information

[Revise the Publishers' Periodicals labeling, routing, and rate group information table by adding ''Marshall Islands, Republic of'' and ''Micronesia, Federated States of'' as follows:]

Destination exchange office code	Country	Routing code	Observations	Publishers' periodical rate group
MAJ	Marshall Islands, Republic of	945	.....	6
* * * * * * *		*	*	*
PNI	Micronesia, Federated States of	945	.....	6
* * * * * * *		*	*	*

* * * * *

World Map

[Insert the Republic of the Marshall Islands and the Federated States of Micronesia at map reference M5.]

* * * * *

World Map Index

[Add references for the Republic of the Marshall Islands and the Federated States of Micronesia to the world map index in alphabetical order as follows:]

* * * * *

Marshall Islands, Republic of M5

* * * * *

Micronesia, Federated States of M5

* * * * *

Index of Countries and Localities

[Revise the references for the Republic of the Marshall Islands and the Federated States of Micronesia by removing the note ''See DMM 608'' and adding the appropriate IMM page number.]

* * * * *

Individual Country Listings

* * * * *

[Add an individual country listing for the Republic of the Marshall Islands.]

Country Conditions for Mailing—Marshall Islands, Republic of

Prohibitions (130)

No list furnished.

Restrictions

No list furnished.

Observations

No list furnished.

Customs Forms Required (123)

Letter-post: PS Form 2976 or 2976–A (see 123.61).

Parcel Post: PS Form 2976–A inside 2976–E (envelope).

Size Limits

Letter-post: See 243.2.

Parcel Post: Maximum length: 60 inches.

Maximum length and girth combined: 108 inches.

Postal/Postcards (250) $0.34.

Aerogrammes (250) $0.75 Enclosures NOT permitted.

AIRMAIL LETTER-POST RATES

Weight not over (ozs.)	Letter-post rate
1	$0.48
2	0.85
3	1.20
4	1.55
5	1.90
6	2.25
7	2.60
8	2.95
12	4.25
16	5.35
20	6.45
24	7.55
28	8.65
32	9.75
36	10.90
40	12.00
44	13.15
48	14.25
52	15.40
56	16.55
60	17.65
64	18.80

Weight Limit: 64 ounces (4 lbs.)

AIRMAIL PARCEL POST RATES

Weight not over (lbs.)	Parcel post rate	Weight not over (lbs.)	Parcel post rate
1	$5.90	36	$50.30
2	6.75	37	51.55
3	8.20	38	52.85
4	9.60	39	54.05
5	11.00	40	55.25
6	12.20	41	56.50
7	13.40	42	57.70
8	14.75	43	58.95
9	16.05	44	60.15
10	17.25	45	61.40
11	18.55	46	62.60
12	19.80	47	63.85
13	21.10	48	65.05
14	22.35	49	66.25
15	23.60	50	67.45
16	24.90	51	68.70
17	26.15	52	69.90
18	27.45	53	71.15
19	28.70	54	72.35
20	30.00	55	73.60
21	31.20	56	74.80
22	32.50	57	76.05
23	33.80	58	77.25
24	35.05	59	78.50
25	36.35	60	79.70
26	37.55	61	80.95
27	38.85	62	82.10
28	40.15	63	83.40
29	41.40	64	84.55
30	42.70	65	85.85
31	43.90	66	87.00
32	45.20	67	88.25
33	46.50	68	89.45
34	47.75	69	90.70
35	49.00	70	91.95

Weight Limit: 70 lbs.

AIRMAIL DIRECT SACK TO ONE ADDRESSEE—M-BAGS (260)

Weight Not Over 11 lbs.	$29.15
Each additional pound or fraction of a pound	2.65

Weight Limit: 66 pounds

Global Priority Mail (GPM) (230) NOT Available

ECONOMY MAIL LETTER-POST RATES

Weight not over (ozs.)	Letter-post rate
16	$4.10
20	4.85
24	5.55
28	6.20
32	6.85
36	7.50
40	8.15
44	8.80
48	9.45
52	10.10
56	10.75
60	11.40
64	12.05

Weight Limit: 64 ounces (4 lbs.)

ECONOMY MAIL PARCEL POST RATES

Weight not over (lbs.)	Parcel post rate	Weight not over (lbs.)	Parcel post rate
5	$9.35	38	$23.40
6	9.85	39	23.70
7	10.40	40	24.10
8	10.85	41	24.45
9	11.35	42	24.80
10	12.30	43	25.15
11	12.80	44	25.45
12	13.20	45	25.80
13	13.65	46	26.15
14	14.10	47	26.50
15	14.55	48	26.85
16	15.00	49	27.20
17	15.40	50	27.50
18	15.80	51	27.85
19	16.20	52	28.20
20	16.60	53	28.55
21	17.05	54	28.90
22	17.40	55	29.20
23	17.85	56	29.55
24	18.30	57	29.90
25	18.70	58	30.20
26	19.10	59	30.55
27	19.45	60	30.90
28	19.85	61	31.25
29	20.20	62	31.55
30	20.55	63	31.90
31	20.95	64	32.20
32	21.30	65	32.55
33	21.65	66	32.85
34	22.05	67	33.20
35	22.40	68	33.50
36	22.65	69	33.85
37	23.00	70	34.20

Weight Limit: 70 lbs.

ECONOMY MAIL DIRECT SACK TO ONE ADDRESSEE—M-BAGS (260)

Regular:	
Weight Not Over 11 lbs.	$17.05
Each additional pound or fraction of a pound	1.55
Books and Sheet Music:	
Weight Not Over 11 lbs.	10.45
Each additional pound or fraction of a pound	0.95

Weight Limit: 66 lbs.

ECONOMY MAIL BOOKS AND SHEET MUSIC RATES (295)

Weight not over (ozs.)	Rate
16	$1.80
20	2.25
24	2.35
28	2.50
32	2.60
36	3.05
40	3.15
44	3.25
48	3.30
52	3.75
56	3.85
60	3.95
64	4.05

Note: This is a bulk mail service that is subject to a minimum entry requirement of 200 pieces or 50 pounds of qualifying contents. See 295.

Weight Limit: 64 ounces (4 lbs.)

Matter for the Blind (270)

Free when sent as Economy Mail.

Weight limit: 15 lbs.

ECONOMY MAIL PUBLISHERS' PERIODICALS RATES (294)

Weight not over (ozs.)	Rate
1	$0.60
2	0.63
3	0.66
4	0.69
5	0.72
6	0.75
7	0.78
8	0.81
12	0.90
16	0.99
20	1.25
24	1.34
28	1.44
32	1.53
36	1.78
40	1.88
44	1.97
48	2.06
52	2.32
56	2.41
60	2.50
64	2.60

$0.25 per pound discount for drop shipments tendered at the New Jersey International and Bulk Mail Center.

Weight Limit: 64 ounces (4 lbs.)

Special Services

Certificate of Mailing—See 313 for fees
COD and Certified—NOT for International Mail
Insurance (320)—NOT Available
International Business Reply Service (373)—NOT Available
International Money Order (371)—NOT Available
International Reply Coupons (372)—NOT Available
Recorded Delivery (360)—NOT Available
Registered Mail (330)—NOT Available
Restricted Delivery (350)—NOT Available
Return Receipt (340)—NOT Available
Global Express Guaranteed (210)—NOT Available

GLOBAL EXPRESS MAIL (EMS) (220)

Weight not over (lbs.)	Rate	Weight not over (lbs.)	Rate
0.5	$15.00	36	$99.70
1	19.35	37	102.00
2	20.10	38	104.40
3	23.65	39	106.75
4	27.15	40	109.15
5	30.60	41	111.55
6	34.10	42	114.00
7	37.55	43	116.30
8	39.55	44	118.70
9	41.65	45	120.90
10	43.60	46	122.95
11	45.95	47	125.20
12	49.05	48	127.35
13	51.55	49	129.40
14	53.30	50	131.55
15	55.30	51	133.75
16	57.50	52	135.85
17	59.65	53	138.05
18	61.75	54	140.15
19	63.80	55	142.30
20	65.95	56	144.50
21	68.05	57	146.60
22	70.15	58	148.80
23	72.30	59	151.00
24	74.35	60	153.35
25	76.45	61	155.85
26	78.60	62	158.20
27	80.65	63	160.55
28	82.80	64	163.05
29	84.90	65	165.40
30	87.00	66	167.90
31	89.15	67	170.30
32	91.30	68	172.90
33	93.30	69	175.40
34	95.50	70	177.90
35	97.75		

Weight Limit: 70lbs.

Insurance (221.3)—NOT Available

Size Limits (223.2)

Maximum length: 36 inches.

Maximum length and girth combined: 79 inches.

Return Receipt Service (221.4): NOT Available.

Reciprocal Service Name: There is no reciprocal service.

Country Code: MH.

Areas Served: All.

* * * * *

[*Add an individual country listing for the Federated States of Micronesia to read as follows:*]

Country Conditions for Mailing—Micronesia, Federated States of

Prohibitions (130)

No list furnished.

Restrictions

No list furnished.

Observations

No list furnished.

Customs Forms Required (123)

Letter-post: PS Form 2976 or 2976–A (see 123.61).

Parcel Post: PS Form 2976–A inside 2976–E (envelope).

Size Limits

Letter-post: See 243.2.

Parcel Post: Maximum length: 60 inches.

Maximum length and girth combined: 108 inches.

Postal/Postcards (250) $0.34.

Aerogrammes (250) $0.75 Enclosures NOT permitted.

AIRMAIL LETTER-POST RATES

Weight not over (ozs.)	Letter-post rate
1	$0.48
2	0.85
3	1.20
4	1.55
5	1.90
6	2.25
7	2.60
8	2.95
12	4.25
16	5.35
20	6.45
24	7.55
28	8.65
32	9.75
36	10.90
40	12.00
44	13.15
48	14.25
52	15.40
56	16.55
60	17.65
64	18.80

Weight Limit: 64 ounces (4 lbs.)

AIRMAIL PARCEL POST RATES

Weight not over (lbs.)	Parcel post rate	Weight not over (lbs.)	Parcel post rate
1	$5.90	36	$50.30

AIRMAIL PARCEL POST RATES—Continued

Weight not over (lbs.)	Parcel post rate	Weight not over (lbs.)	Parcel post rate
2	6.75	37	51.55
3	8.20	38	52.85
4	9.60	39	54.05
5	11.00	40	55.25
6	12.20	41	56.50
7	13.40	42	57.70
8	14.75	43	58.95
9	16.05	44	60.15
10	17.25	45	61.40
11	18.55	46	62.60
12	19.80	47	63.85
13	21.10	48	65.05
14	22.35	49	66.25
15	23.60	50	67.45
16	24.90	51	68.70
17	26.15	52	69.90
18	27.45	53	71.15
19	28.70	54	72.35
20	30.00	55	73.60
21	31.20	56	74.80
22	32.50	57	76.05
23	33.80	58	77.25
24	35.05	59	78.50
25	36.35	60	79.70
26	37.55	61	80.95
27	38.85	62	82.10
28	40.15	63	83.40
29	41.40	64	84.55
30	42.70	65	85.85
31	43.90	66	87.00
32	45.20	67	88.25
33	46.50	68	89.45
34	47.75	69	90.70
35	49.00	70	91.95

Weight Limit: 70 lbs.

AIRMAIL DIRECT SACK TO ONE ADDRESSEE—M-BAGS (260)

Weight Not Over 11 lbs.	$29.15
Each additional pound or fraction of a pound	2.65

Weight Limit: 66 pounds

Global Priority Mail (GPM) (230) NOT Available.

ECONOMY MAIL LETTER-POST RATES

Weight not over (ozs.)	Letter-post rate
16	$4.10
20	4.85
24	5.55
28	6.20
32	6.85
36	7.50
40	8.15
44	8.80
48	9.45
52	10.10
56	10.75
60	11.40
64	12.05

Weight Limit: 64 ounces (4 lbs.)

ECONOMY MAIL PARCEL POST RATES

Weight not over (lbs.)	Parcel post rate	Weight not over (lbs.)	Parcel post rate
5	$9.35	38	$23.40
6	9.85	39	23.70
7	10.40	40	24.10
8	10.85	41	24.45
9	11.35	42	24.80
10	12.30	43	25.15
11	12.80	44	25.45
12	13.20	45	25.80
13	13.65	46	26.15
14	14.10	47	26.50
15	14.55	48	26.85
16	15.00	49	27.20
17	15.40	50	27.50
18	15.80	51	27.85
19	16.20	52	28.20
20	16.60	53	28.55
21	17.05	54	28.90
22	17.40	55	29.20
23	17.85	56	29.55
24	18.30	57	29.90
25	18.70	58	30.20
26	19.10	59	30.55
27	19.45	60	30.90
28	19.85	61	31.25
29	20.20	62	31.55
30	20.55	63	31.90
31	20.95	64	32.20
32	21.30	65	32.55
33	21.65	66	32.85
34	22.05	67	33.20
35	22.40	68	33.50
36	22.65	69	33.85
37	23.00	70	34.20

Weight Limit: 70 lbs.

ECONOMY MAIL DIRECT SACK TO ONE ADDRESSEE—M–BAGS (260)

Regular:	
Weight Not Over 11 lbs.	$17.05
Each additional pound or fraction of a pound	1.55
Books and Sheet Music:	
Weight Not Over 11 lbs.	10.45
Each additional pound or fraction of a pound	0.95

Weight Limit: 66 lbs.

ECONOMY MAIL BOOKS AND SHEET MUSIC RATES (295)

Weight not over (ozs.)	Rate
16	$1.80
20	2.25
24	2.35
28	2.50
32	2.60
36	3.05
40	3.15
44	3.25
48	3.30
52	3.75
56	3.85
60	3.95

ECONOMY MAIL BOOKS AND SHEET MUSIC RATES (295)—Continued

Weight not over (ozs.)	Rate
64	4.05

Note: This is a bulk mail service that is subject to a minimum entry requirement of 200 pieces or 50 pounds of qualifying contents. See 295.

Weight Limit: 64 ounces (4 lbs.)

Matter for the Blind (270)

Free when sent as Economy Mail. Weight limit: 15 lbs.

ECONOMY MAIL PUBLISHERS' PERIODICALS RATES (294)

Weight not over (ozs.)	Rate
1	$0.60
2	0.63
3	0.66
4	0.69
5	0.72
6	0.75
7	0.78
8	0.81
12	0.90
16	0.99
20	1.25
24	1.34
28	1.44
32	1.53
36	1.78
40	1.88
44	1.97
48	2.06
52	2.32
56	2.41
60	2.50
64	2.60

$0.25 per pound discount for drop shipments tendered at the New Jersey International and Bulk Mail Center.

Weight Limit: 64 ounces (4 lbs.)

Special Services

Certificate of Mailing—See 313 for fees

COD and Certified—NOT for International Mail

Insurance (320)—NOT Available

International Business Reply Service (373)—NOT Available

International Money Order (371)—NOT Available

International Reply Coupons (372)—NOT Available

Recorded Delivery (360)—NOT Available

Registered Mail (330)—NOT Available

Restricted Delivery (350)—NOT Available

Return Receipt (340)—NOT Available

Global Express Guaranteed (210)—NOT Available

GLOBAL EXPRESS MAIL (EMS) (220)

Weight not over (lbs.)	Rate	Weight not over (lbs.)	Rate
0.5	$15.00	36	$99.70
1	19.35	37	102.00
2	20.10	38	104.40
3	23.65	39	106.75
4	27.15	40	109.15
5	30.60	41	111.55
6	34.10	42	114.00
7	37.55	43	116.30
8	39.55	44	118.70
9	41.65	45	120.90
10	43.60	46	122.95
11	45.95	47	125.20
12	49.05	48	127.35
13	51.55	49	129.40
14	53.30	50	131.55
15	55.30	51	133.75
16	57.50	52	135.85
17	59.65	53	138.05
18	61.75	54	140.15
19	63.80	55	142.30
20	65.95	56	144.50
21	68.05	57	146.60
22	70.15	58	148.80
23	72.30	59	151.00
24	74.35	60	153.35
25	76.45	61	155.85
26	78.60	62	158.20
27	80.65	63	160.55
28	82.80	64	163.05
29	84.90	65	165.40
30	87.00	66	167.90
31	89.15	67	170.30
32	91.30	68	172.90
33	93.30	69	175.40
34	95.50	70	177.90

Weight Limit: 70 lbs.

Insurance (221.3)—NOT Available.

Size Limits (223.2).

Maximum length: 36 inches.

Maximum length and girth combined: 79 inches.

Return Receipt Service (221.4): Not Available.

Reciprocal Service Name: There is no reciprocal service.

Country Code: FM.

Areas Served: All.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–23008 Filed 11–22–05; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail: Republic of the Marshall Islands and Federated States of Micronesia

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) to remove references to the Republic of the Marshall Islands and the Federated States of Micronesia. Mail to the Republic of the Marshall Islands and the Federated States of Micronesia is no longer treated as domestic mail.

EFFECTIVE DATE: 12:01 a.m., Sunday, January 8, 2006.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 202–268–7262.

SUPPLEMENTARY INFORMATION: The Postal Service published a final notice of rulemaking entitled ''International Mail: Republic of the Marshall Islands and Federated States of Micronesia'' elsewhere in this issue of the **Federal Register**. This final notice of rulemaking adopts international rate schedules for the Republic of the Marshall Islands and the Federated States of Micronesia. The United States government negotiated this agreement with the two former United States Trust Territories.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ For the reasons discussed above, the Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) to remove references to the Republic of the Marshall Islands and the Federated States of Micronesia. The DMM is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR part 111.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows.

600 Basic Standards for all Mailing Services

* * * * *

601 Mailability

* * * * *

9.0 Perishables

* * * * *

9.3 Live Animals

* * * * *

9.3.7 Mailed to Pacific Islands

[Revise 9.3.7 by removing references to the Republic of the Marshall Islands and the Federated States of Micronesia.]

* * * * *

9.3.9 Other Insects

[Revise 9.3.9 by removing references to the Republic of the Marshall Islands and the Federated States of Micronesia.]

* * * * *

608 Postal Information and Resources

* * * * *

2.0 Domestic Mail

* * * * *

2.2 Mail Treated as Domestic

* * * * *

[Revise 2.2 by removing the listings for Marshall Islands, Republic of the, and Micronesia, Federated States of.]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–23006 Filed 11–22–05; 8:45 am]

BILLING CODE 7710–12–P

Federal Register

Wednesday,
November 23, 2005

Part IV

The President

Proclamation 7963—Thanksgiving Day, 2005

Federal Register
Vol. 70, No. 225
Wednesday, November 23, 2005

Presidential Documents

Title 3—

The President

Proclamation 7963 of November 18, 2005

Thanksgiving Day, 2005

By the President of the United States of America

A Proclamation

Thanksgiving Day is a time to remember our many blessings and to celebrate the opportunities that freedom affords. Explorers and settlers arriving in this land often gave thanks for the extraordinary plenty they found. And today, we remain grateful to live in a country of liberty and abundance. We give thanks for the love of family and friends, and we ask God to continue to watch over America.

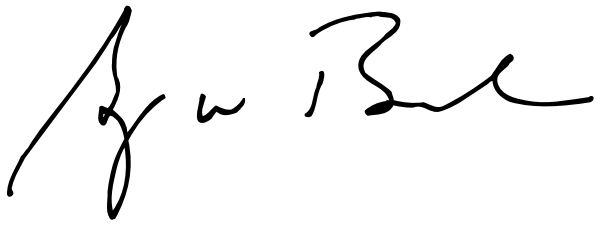
This Thanksgiving, we pray and express thanks for the men and women who work to keep America safe and secure. Members of our Armed Forces, State and local law enforcement, and first responders embody our Nation's highest ideals of courage and devotion to duty. Our country is grateful for their service and for the support and sacrifice of their families. We ask God's special blessings on those who have lost loved ones in the line of duty.

We also remember those affected by the destruction of natural disasters. Their tremendous determination to recover their lives exemplifies the American spirit, and we are grateful for those across our Nation who answered the cries of their neighbors in need and provided them with food, shelter, and a helping hand. We ask for continued strength and perseverance as we work to rebuild these communities and return hope to our citizens.

We give thanks to live in a country where freedom reigns, justice prevails, and hope prospers. We recognize that America is a better place when we answer the universal call to love a neighbor and help those in need. May God bless and guide the United States of America as we move forward.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 24, 2005, as a National Day of Thanksgiving. I encourage all Americans to gather together in their homes and places of worship with family, friends, and loved ones to reinforce the ties that bind us and give thanks for the freedoms and many blessings we enjoy.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–23287
Filed 11–22–05; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
November 23, 2005

Part V

The President

Proclamation 7964—National Family Week, 2005

Federal Register
Vol. 70, No. 225
Wednesday, November 23, 2005

Presidential Documents

Title 3—

The President

Proclamation 7964 of November 21, 2005

National Family Week, 2005

By the President of the United States of America

A Proclamation

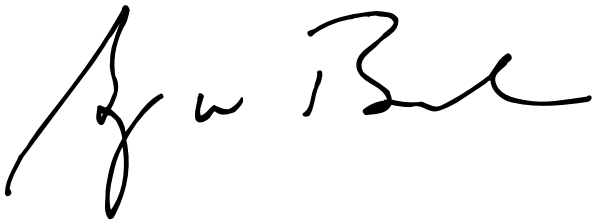
Families give our society direction and purpose. During National Family Week, we celebrate the many contributions families make to our country.

Throughout America's history, families have been the foundation of our society and a source of stability and love for every generation. Strong families teach children to live moral lives and help us pass down the values that define a caring society. By nurturing a child's personal development and providing a safe environment for growth, families prepare our Nation's youth to realize the promise of America. Family is one of the three cornerstones of the Helping America's Youth initiative, led by First Lady Laura Bush. We are working with families, schools, and communities to help children make right choices and build healthy, successful lives. Through USA Freedom Corps, my Administration is also providing opportunities for families to volunteer together and make a positive difference in their communities.

At this crucial hour in the history of freedom, our Nation is grateful for the sacrifice of our military families who love and support the men and women of our Armed Forces. My Administration is committed to providing a better quality of life for our military families and helping them plan for the future. During National Family Week and throughout the year, Americans stand solidly behind the men and women of our Armed Forces and join all military families as they pray for the safety and strength of their sons and daughters, husbands and wives, and fathers and mothers.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 20 through November 26, 2005, as National Family Week. I invite the States, communities, and all the people of the United States to join together in observing this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–23332
Filed 11–22–05; 11:59 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 70, No. 225

Wednesday, November 23, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65825–66246 1
66247–66746 2
66747–67084 3
67085–67338 4
67339–67640 7
67641–67900 8
67901–68328 9
68329–69040 10
69041–69246 14
69247–69420 15
69421–69630 16
69631–69890 17
69891–70030 18
70031–70482 21
70483–70702 22
70703–70990 23

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7924 (Revoked by 7959) 67899
7951 66741
7952 67331
7953 67333
7954 67335
7955 67337
7956 67635
7957 67637
7958 67639
7959 67899
7960 69247
7961 69887
7962 69889
7963 70985
7964 70989
Executive Orders:
12170 (See Notice of November 9, 2005) 69039
13389 67325
13390 67327
Administrative Orders:
Presidential Determinations:
No. 2006-03 of October 24, 2005 65825
Notices:
Notice of November 1, 2005 66745
Notice of November 9, 2005 69039
Memorandums:
Memorandum of November 10, 2005 69419

5 CFR

532 69041
950 67339
2460 69041
Ch. XCIX 66116
9901 66116
Proposed Rules:
532 69467

6 CFR

Proposed Rules:
5 67931

7 CFR

1 69804
82 67306
210 70031
220 66247
457 67085
868 69249
987 67085
1427 67342
Proposed Rules:
319 67375
930 67375
984 67096

8 CFR

236 67087
239 67087
241 67087
287 67087

9 CFR

327 70033
Proposed Rules:
93 67933
381 70746

10 CFR

1 69421
490 70703
Proposed Rules:
20 68350
50 ..... 67598, 69690
63 67098
73 67380
600 69250
603 69250

11 CFR

300 69631

12 CFR

4 69633
8 69641
19 69633
41 70664
201 69044
222 70664
232 70664
263 69633
264a 69633
268 67641
308 69633
334 70664
336 69633
507 69633
509 69633
571 70664
600 69644
602 69644
603 69644
604 69644
606 69644
611 67901
612 67901
614 67901
615 67901
620 67901
627 70035
717 70664
Proposed Rules:
652 69692
655 69692

13 CFR

106 70703

120.....69645
121.....69045, 69048
301.....69053
304.....69053
Proposed Rules:
120.....66800
121.....68368

14 CFR

21.....67345
23.....69891, 69893
25.....69053
39 .....65827, 66250, 66747, 66749, 67644, 67901, 67904, 69056, 69059, 69061, 69063, 69065, 69067, 69069, 69071, 69073, 69075, 69423, 69424, 69427, 69430, 69895, 70035, 70038, 70042, 70044, 70483, 70707, 70711, 70713, 70715, 70718
71 .....65832, 66251, 67217, 68329, 69077, 69432, 69646, 69647, 69648, 69649, 69897, 70486, 70487
93.....66253
97 .....65833, 66256, 69272, 69274
121.....67345, 68330
135.....67345
145.....67345
183.....67345
Proposed Rules:
21.....68374
25.....67278, 70922
39 .....65864, 66300, 66302, 67099, 67935, 67939, 67946, 67948, 67949, 67952, 68377, 68379, 68381, 68384, 69286, 69288, 69291, 69472, 70048, 70555, 70749
71 .....66305, 68386, 69709, 69710, 69711, 69713, 70558, 70922
73.....66306
91.....70922
93.....67388
121.....65866, 70922
125.....70922
129.....70922
204.....67389
389.....68389
399.....67389

15 CFR

303.....67645
736.....67346
738.....67346
740.....67346, 69432
742.....67346, 69432
744.....67346
772.....67346, 69432
774.....69432
902.....67349

16 CFR

3.....67350
Proposed Rules:
305.....66307

17 CFR

232.....67350
Proposed Rules:
1.....70749
145.....70749
147.....70749

18 CFR

Proposed Rules:
41.....65866
47.....69474
158.....65866
159.....69474
286.....65866
349.....65866

20 CFR

Proposed Rules:
404.....67101
411.....65871
416.....67101

21 CFR

Ch. I.....67650
1.....70488
11.....70488
25.....69276
172.....69435
312.....70720
520 .....65835, 67352, 69438
556.....70046
558.....66257, 70046
878.....67353
Proposed Rules:
874.....67652
884.....69102
1301.....69474
1309.....69474

23 CFR

1345.....69078

24 CFR

81.....69022

25 CFR

Proposed Rules:
542.....69293

26 CFR

1 .....67355, 67356, 67905
25.....67356
26.....67356
53.....67356
55.....67356
156.....67356
157.....67356
301.....67356
Proposed Rules:
1 .....67220, 67397, 69919
16.....69486
25.....67397
26.....67397
53.....67397
55.....67397
156.....67397
157.....67397
301.....67397

28 CFR

45.....69650
503.....67090
522.....67091
523.....66752
542.....67090
543.....67090
907.....69897
Proposed Rules:
16.....69487
524.....66814

29 CFR

4022.....69277
4044.....69277

30 CFR

5.....67632
15.....67632
18.....67632
19.....67632
20.....67632
22.....67632
23.....67632
27.....67632
28.....67632
33.....67632
35.....67632
36.....67632
723.....70698
724.....70698
845.....70698
846.....70698
Proposed Rules:
250.....69118
251.....69118
280.....69118
948.....67654

31 CFR

103.....66754, 66761
210.....67364

32 CFR

310.....70489
581.....67367
Proposed Rules:
317.....66314
578.....66602

33 CFR

100.....68333, 69279
117 .....66258, 66260, 67368, 68335, 69439, 70491
165 .....65835, 65838, 69279, 70491, 70493, 70730, 70732
334.....67370
Proposed Rules:
117.....70563
155.....67066
157.....67066
165.....69128, 70052

34 CFR

673.....67373
674.....67373
675.....67373
676.....67373

36 CFR

212.....68264
251.....68264, 70496
261.....68264, 70496
291.....70496
295.....68264
1190.....70734
1191.....70734

38 CFR

17.....67093

39 CFR

20.....70964, 70976
111.....70982
Proposed Rules:
111.....66314, 67399

40 CFR

51.....68218
52 .....65838, 65842, 65845, 65847, 66261, 66263, 66264, 66769, 68337, 69081, 69085, 69440, 69443, 70047, 70734, 70736
60.....66794
62.....69455
63.....66280, 69655
80.....69240, 70498
81 .....66264, 68339, 69085, 69443
87.....69664
146.....70513
180 .....67906, 67910, 69456, 69457, 70737
271.....69900, 70740
312.....66070
Proposed Rules:
51 .....65984, 69302, 70565
52 .....65873, 65984, 66315, 66316, 67109, 68389, 69130, 69302, 69488, 70565, 70750, 70751
60.....65873
63.....65873, 69210
80.....70566
81 .....66315, 66316, 67109, 68390, 69130, 70751
82.....67120
180.....69489
271.....69922, 70761

41 CFR

102-71.....67786
102-72.....67786
102-73.....67786
102-74.....67786
102-75.....67786
102-76.....67786
102-77.....67786
102-78.....67786
102-79.....67786
102-80.....67786
102-81.....67786
102-82.....67786
102-83.....67786

42 CFR

405.....70116
410.....70116
411.....70116
413.....70116
414.....70116, 70478
418.....70532
419.....68516
423.....67568
424.....70116
426.....70116
484.....68132
485.....68516
Proposed Rules:
121.....70765

43 CFR

45.....69804
1820.....69687
Proposed Rules:
2930.....70570
5420.....69714

44 CFR

64.....65849

45 CFR

670.....69098

Proposed Rules:

162.....70574
703.....67129
1182.....70768
1621.....67954
1624.....67954
1631.....66814

46 CFR

388.....66796

Proposed Rules:

162.....66066

47 CFR

20.....67915
54.....65850
68.....67915
73 .....66285, 66286, 66287, 66288, 70742, 70743

Proposed Rules:

73 .....66329, 66330, 66331, 66332, 70773, 70774, 70775, 70776, 70777, 70778

48 CFR

2.....69100
31.....69100
239 .....67917, 67918, 67919
242.....67919
243.....67921
244.....67922
250.....67923
252 .....67919, 67920, 67924

Proposed Rules:

242.....67955

49 CFR

10.....70548
213.....66288
383.....66489
384.....66489
541.....69688
543.....69688
545.....69688
601.....67318

Proposed Rules:

173.....69493
177.....69493
385.....67405

50 CFR

17 .....66664, 67924, 69464
221.....69804
224.....69903
300.....69912, 70549
622.....69914, 69915
635.....67929
648.....66797, 70744
660 .....65861, 67349, 69282, 69916, 69917
679.....65863, 70553

Proposed Rules:

17 .....66492, 66906, 67956, 68294, 68982, 69303, 69717, 69854, 69922, 70779
223.....67130
224.....67130
226.....66332
622 .....67985, 69132, 70575, 70780
648.....65874, 69722
660.....69502, 70054
679.....69505

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 23, 2005

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Sea turtle conservation—

Shrimp trawling requirements; published 10-27-05

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Indiana; published 11-23-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Tralkoxydim; published 11-23-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Product jurisdiction:

Combination product; definition of mode of action; amendment; published 8-25-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Wisconsin; published 10-24-05

POSTAL SERVICE

International Mail Manual:

Issue 31; issuance; published 11-23-05

SMALL BUSINESS ADMINISTRATION

Cosponsorship, fee and non-fee based SBA-sponsored activities and gifts; implementation and minimum requirements; published 11-23-05

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Dividends paid deduction for stock held in employee stock ownership plan; published 8-25-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Grapes grown in southeastern California and imported table grapes; comments due by 11-28-05; published 9-27-05 [FR 05-19328]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Citrus from Peru; comments due by 11-29-05; published 9-30-05 [FR 05-19574]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Meetings; Sunshine Act; Open for comments until further notice; published 10-4-05 [FR 05-20022]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

South Atlantic Fishery Management Council; hearings; comments due by 11-28-05; published 11-14-05 [FR 05-22551]

Northeastern United States fisheries—

Atlantic surfclam and ocean quahog; comments due by 12-1-05; published 11-1-05 [FR 05-21772]

Summer flounder, scup, and black sea bass; comments due by 12-2-05; published 11-17-05 [FR 05-22856]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Commodity trading advisor; client definition; comments due by 11-28-05; published 9-28-05 [FR 05-19323]

Futures commission merchants and specified foreign currency forward and inventory capital charges; alternative market risk and credit risk capital charges; comments due by 11-30-05; published 11-23-05 [FR 05-23148]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Foreign taxation prohibition on U.S. assistance programs; comments due by 11-29-05; published 9-30-05 [FR 05-19463]

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):

Information technology security; comments due by 11-29-05; published 9-30-05 [FR 05-19468]

Price evaluation adjustment; expiration; comments due by 11-29-05; published 9-30-05 [FR 05-19475]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Methyl bromide; critical use exemption; comments due by 11-28-05; published 10-27-05 [FR 05-21526]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Utah; comments due by 12-2-05; published 11-2-05 [FR 05-21836]

Virginia; comments due by 12-2-05; published 11-2-05 [FR 05-21835]

Air quality implementation plans; approval and promulgation; various States:

Tennessee; comments due by 12-1-05; published 11-1-05 [FR 05-21529]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Muscodor albus QST 20799 and volatiles produced on rehydration; comments due by 11-28-05; published 9-28-05 [FR 05-19259]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Texas; general permit for territorial seas; Open for comments until further notice; published 9-6-05 [FR 05-17614]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Commercial mobile radio services—

Roaming obligations; reexamination; comments due by 11-28-05; published 9-28-05 [FR 05-19346]

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Information technology security; comments due by 11-29-05; published 9-30-05 [FR 05-19468]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Healh Care Infrastructure Improvement Program—

Forgiveness of indebtedness; comments due by 11-29-05; published 9-30-05 [FR 05-19307]

Health Care Infrastructure Improvement Program—

Cancer-related health; qualifying hospitals loan program selection criteria; comments due by 11-29-05; published 9-30-05 [FR 05-19306]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

New York; comments due by 11-30-05; published 8-8-05 [FR 05-15562]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

California tiger salamander; comments due by 11-28-05; published 11-17-05 [FR 05-22781]

Hawaiian picture-wings; comments due by 12-2-05; published 11-18-05 [FR 05-22827]

LABOR DEPARTMENT

Mine Safety and Health Administration

Education and training, etc.:

Alcohol and other drugs use on mine property; risks and hazards; comments due by 11-27-05; published 10-4-05 [FR 05-19846]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:

Ionizing radiation; occupational exposure; comments due by 11-28-05; published 8-1-05 [FR 05-15119]

LEGAL SERVICES CORPORATION

Client grievance procedure

Workshop; comments due by 12-2-05; published 11-9-05 [FR 05-22288]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millenium Copyright Act:

Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 12-1-05; published 10-3-05 [FR 05-19721]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Small business innovation research and small business technology transfer contractor re-certification of program compliance; comments due by 11-29-05; published 9-30-05 [FR 05-19399]

Federal Acquisition Regulation (FAR):

Information technology security; comments due by 11-29-05; published 9-30-05 [FR 05-19468]

Price evaluation adjustment; expiration; comments due by 11-29-05; published 9-30-05 [FR 05-19475]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Rulemaking petitions:

Scarpelli, Joseph; comments due by 11-28-05; published 9-14-05 [FR 05-18192]

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 11-30-05; published 10-31-05 [FR 05-21638]

POSTAL SERVICE

Domestic Mail Manual:

Bundles of flat-size and irregular parcel mail; bundle integrity; comments due by 12-2-05; published 11-2-05 [FR 05-21777]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Standard time zone boundaries:

Indiana; comments due by 11-30-05; published 10-31-05 [FR 05-21606]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 11-28-05; published 9-27-05 [FR 05-18910]

AvCraft Dornier; comments due by 12-1-05; published 11-1-05 [FR 05-21697]

BAE Systems; comments due by 11-28-05; published 10-27-05 [FR 05-21437]

BAE Systems (Operations) Ltd.; comments due by

11-28-05; published 9-27-05 [FR 05-18909]
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
Bombardier; comments due by 11-28-05; published 10-27-05 [FR 05-21435]
Rolls-Royce Corp.; comments due by 12-2-05; published 10-3-05 [FR 05-19693]
Class E airspace; comments due by 11-28-05; published 10-31-05 [FR 05-21583]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Motor homes and travel trailers over 10,000 pounds; cargo carrying capacity; comments due by 11-30-05; published 10-28-05 [FR 05-21500]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Cost sharing arrangement; methods under section 482 to determine taxable income; public hearing; comments due by 11-28-05; published 8-29-05 [FR 05-16626]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2419/P.L. 109–103
Energy and Water Development Appropriations Act, 2006 (Nov. 19, 2005; 119 Stat. 2247)

H.R. 4326/P.L. 109–104
To authorize the Secretary of the Navy to enter into a contract for the nuclear refueling and complex overhaul of the U.S.S. Carl Vinson (CVN-70). (Nov. 19, 2005; 119 Stat. 2285)

H.J. Res. 72/P.L. 109–105
Making further continuing appropriations for the fiscal year 2006, and for other purposes. (Nov. 19, 2005; 119 Stat. 2287)

Last List November 16, 2005

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