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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.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–106–2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from this area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions are no longer necessary.

DATES: This interim rule was effective March 1, 2005. We will consider all comments that we receive on or before May 6, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–106–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–106–2.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on November 9, 2004, and published in the **Federal Register** on November 16, 2004 (69 FR 67041–67042, Docket No. 04–106–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portion of Los Angeles County. The last finding of Oriental fruit fly in this quarantined area was August 30, 2004.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Therefore, we are removing the entry for this county from the list of quarantined areas in § 301.93–3(c).

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could spread from this area to noninfested areas of the United States. Since we have concluded that the Oriental fruit fly no longer exists in this county, immediate action is warranted to remove the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from this area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Oriental fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas.

County records indicate there are approximately 23 nurseries, 27 farmers markets, 4 certified growers, 3 mobile vendors, and 152 fruit sellers within the quarantined portion of Los Angeles County that could be affected by the lifting of the quarantine in this interim rule.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Los Angeles County, CA, had little effect on the small entities in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.93–3 [Amended]

■ 2. In § 301.93–3, paragraph (c) is amended by removing, under the heading ''CALIFORNIA'', the entry for Los Angeles County.

Done in Washington, DC, this 1st day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–4376 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1924

RIN 0575–AC60

Withdrawal of Direct Final Rule for Surety Requirements

AGENCY: Rural Housing Service, USDA.

ACTION: Withdrawal of direct final rule.

SUMMARY: The Rural Housing Service (RHS) is withdrawing the direct final rule to change the threshold for surety requirements, published on January 7, 2005 (70 FR 1325–26). RHS stated in the direct final rule that if it received adverse comments by March 8, 2005, the agency would publish a timely notice of withdrawal in the **Federal Register**. RHS subsequently received adverse comments and, therefore, is withdrawing the direct final rule.

DATES: *Effective Date:* The direct final rule published on January 7, 2005, at 70 FR 1325–26 is withdrawn as of March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Michel Mitias, Technical Support Branch, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, STOP 0761, 1400 Independence Avenue SW., Washington, DC 20250–0761; Telephone: 202–720–9653; FAX: 202–690–4335; E-mail: *michel.mitias@usda.gov*.

SUPPLEMENTARY INFORMATION: RHS published a direct final rule amending its regulations to change the threshold for surety requirements guaranteeing payment and performance from a $100,000 contract amount to the maximum Rural Development Single Family Housing area lending limit. RHS received adverse comments on this direct final rule. Therefore, the agency is withdrawing the direct final rule. The regulations addressing surety requirements will not take effect on April 7, 2005.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

Dated: February 24, 2005.

Rodney E. Hood,

Acting Administrator, Rural Housing Service.

[FR Doc. 05–4323 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20066; Airspace Docket No. 05–ACE–8]

Modification of Class E Airspace; Macon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Macon, MO. A review of controlled airspace currently titled Macon-Fower, MO revealed it does not conform to proper format, does not reflect the correct name of the airport nor its correct airport reference point (ARP) and does not comply with criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is renamed, modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, July 7, 2005. Comments

for inclusion in the Rules Docket must be received on or before April 20, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20066/ Airspace Docket No. 05–ACE–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 modifies the Class E airspace area extending upward from 700 feet above the surface currently titled ''Macon-Fower, MO''. In order to conform to proper format, the airspace area is renamed ''Macon, MO''. The airport at Macon, MO is incorrectly identified as ''Macon-Fower Municipal Airport'' and its ARP is not accurate. This action amends the airport name in the legal description to ''Macon-Fower Memorial Airport'' and corrects the ARP. An examination of controlled airspace for Macon-Fower Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6.4-mile radius to a 6.5-mile radius of Macon-Fower Memorial Airport and brings the legal description of the Macon, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participated in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20066/Airspace Docket No. 05–ACE–8.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significantly 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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

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

* * * * *

ACE MO E5 Macon, MO

Macon-Fower Memorial Airport, MO
(Lat. 39°43′43″ N., long. 92°27′52″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Macon-Fower Memorial Airport.

* * * * *

Issued in Kansas City, MO, on February 24, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4286 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket Number: 041026293–5031–02]

RIN 0694–AD35

Defense Priorities and Allocations System (DPAS): Electronic Transmission of Reasons for Rejecting Rated Orders

AGENCY: Bureau of Industry and Security (BIS), Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the Defense Priorities and Allocations System to allow a person rejecting a rated order to give his or her reasons for the rejection through electronic means rather than requiring a person to submit the rationale in writing.

DATES: This rule is effective April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Eddy Aparicio, Office of Strategic Industries and Economic Security, Room 3876, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone; (202) 482–8234, or e-mail; *eaparici@bis.doc.gov*.

SUPPLEMENTARY INFORMATION: Under Title I of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2061 *et seq.*), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner as to promote these approved programs. Additional priorities authority is found in section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82. DPAS authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (45 U.S.C. 5915 *et seq.*).

Originally published in 1984, the DPAS regulations were revised on June 11, 1998 (63 FR 31918), to update, streamline, and clarify a number of provisions. The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements, including critical infrastructure protection and restoration, as well as provide an operating system to support rapid industrial response in a national emergency. In pursuit of the DPAS mission, the Department of Commerce endeavors to minimize disruptions to the normal commercial activities of industry.

An integral component of DPAS is a system of ''rated orders.'' Prior to the effective date of this rule, recipients of rated orders who rejected such orders were required to furnish the reasons for rejection in writing and not electronically. This rule provides that such reasons may be furnished either in writing or electronically.

BIS published a notice of proposed rulemaking in the **Federal Register** on November 22, 2004 (69 FR 67872) that proposed to make electronic furnishing of the reasons for rejection permissible. BIS received one comment on the proposed rule, which favored the proposal. Therefore BIS is publishing the final rule exactly as stated in the proposed rule. Under this final rule a person will be able to transmit his or her rationale for rejection either electronically or in writing. This amendment to the DPAS regulations should allow this information to be transmitted more quickly.

Rulemaking Requirements

1. *Executive Order 12866:* This rule has been determined to be not significant under EO 12866.

2. *Executive Order 13132:* This rule does not contain policies with federalism implications as this term is defined in EO 13132.

3. *Paperwork Reduction Act:* This rule contains collection of information requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. These collections have been approved by the OMB under control number 0694–0092, ''Procedures for Acceptance or Rejection of a Rated Order,'' which carries a burden hour estimate of 1 to 15 minutes per response. This rule results in an overall reduction of approximately five minutes for the one percent of respondents who reject rated orders they receive.

4. *Regulatory Flexibility Act:* Chief Counsel for Regulation of the Department of Commerce has certified to the Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities (*i.e.*, companies or other organizations involved in production for the U.S. defense industrial base). The factual basis for this determination was published with the proposal rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

■ Accordingly, the DPAS regulations (15 CFR part 700) are amended as follows:

PART 700—[AMENDED]

■ 1. The authority citation for part 700 is revised to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

■ 2. In § 700.13, revise paragraph (d)(1) to read as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

* * * * *

Dated: March 1, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–4326 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 041222360–4360–01]

RIN 0694–AD24

Licensing Policy for Entities Sanctioned Under Specified Statutes; License Requirement for Certain Sanctioned Entities; and Imposition of License Requirement for Tula Instrument Design Bureau

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule states BIS's licensing policy regarding transactions involving entities sanctioned by the State Department under three specified statutes, imposes a new license requirement for certain entities sanctioned by the State Department, and identifies one specific entity subject to this new license requirement, Tula Instrument Design Bureau of Russia.

DATES: This rule is effective March 7, 2005. Comments must be received by May 6, 2005.

ADDRESSES: Comments may be submitted by e-mail to *rpd2@bis.doc.gov,* by fax at (202) 482–3355, or on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694–AD24 in all comments. Comments on the information collection should also be sent to David Rostker, Office of Management and Budget Desk Officer, by e-mail at *david_rostker@omb.eop.gov,* or by fax to (202) 395–7285. Refer to Regulatory Identification Number (RIN) 0694–AD24 in all comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services at *warvin@bis.doc.gov* or (202) 482–2440.

SUPPLEMENTARY INFORMATION: Several statutes authorize or require the United States Government to impose export sanctions on entities if such entities have engaged in activities that contribute to the proliferation of weapons of mass destruction or are otherwise contrary to the foreign policy interests of the United States. This rule sets forth BIS's licensing policy for entities subject to sanctions imposed by the State Department under the Iran-Iraq Arms Nonproliferation Act of 1992 (Pub. L. 102–484), the Iran Nonproliferation Act of 2000 (Pub. L. 107–178) and section 11B(b)(1) of the Export Administration Act of 1979 (also known as the Missile Technology Control Act of 1990). This rule also imposes a new license requirement for certain entities sanctioned by the State Department, and identifies one specific entity, Tula Instrument Design Bureau of Russia, subject to this new license requirement.

Licensing Policy for Transactions Involving Sanctioned Entities

This rule amends the Export Administration Regulations (EAR) by adding new § 744.19 to set forth explicitly BIS's licensing policy regarding entities sanctioned by the State Department under the authority of three statutes. Specifically, new § 744.19 provides that BIS's policy is to deny any export or reexport license application if the applicant, other party authorized to receive the license, purchaser, intermediate consignee, ultimate consignee, or end-user is subject to: (1) A sanction issued pursuant to the Iran-Iraq Arms Nonproliferation Act of 1992 (Pub. L. 102–484) that prohibits the issuance of any license for any export by or to the sanctioned person or, (2) a sanction issued pursuant to the Iran Nonproliferation Act of 2000 (Pub. L. 107–178) that prohibits the granting of a license for the transfer to foreign persons of items, the export of which is controlled under the Export Administration Regulations, or (3) a sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (also known as the Missile Technology Control Act of 1990), that prohibits the issuance of new licenses for exports to the sanctioned entity of items controlled pursuant to the Export Administration Act of 1979. In addition, § 744.19 sets forth BIS's policy to deny any export or reexport application for items listed on the Commerce Control List with missile technology (MT) listed as a reason for control if any entity subject to a sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended, is a party to the transaction. Section 11B(b)(1)(B)(i) prohibits the issuance of new individual licenses for exports to the sanctioned entity of MTCR annex equipment or technology controlled pursuant to the Export Administration Act of 1979.

The State Department publishes notices of the imposition of sanctions under these three statutes in the **Federal Register.** Because they do not involve the imposition of any new license requirements, the sanctions do not require amendment of the EAR and, prior to publication of this rule, were not incorporated into or otherwise referenced in the EAR. The sanctions imposed under the three statutes, however, prescribe the licensing policy that BIS must apply to applications that involve the transfer of certain items to, and in the case of the Iran-Iraq Arms Nonproliferation Act of 1992 by, the sanctioned entity. New § 744.19 provides a reference to these sanctions in the EAR and also sets forth BIS's policy that a license application is subject to a general policy of denial if a sanctioned entity is listed as any party to the transaction, including the purchaser or intermediate consignee, on the license application.

New License Requirement

This rule adds new § 744.20 to the EAR to provide that BIS may impose, as new foreign policy controls, license requirements on exports and reexports of items subject to the EAR to entities sanctioned by the State Department. Such license requirements are in addition to those imposed by other provisions of the EAR. Decisions to impose such license requirements will be made on a case-by-case basis. In determining whether to impose license requirements pursuant to § 744.20, BIS will consider the nature of the action that led to the State Department sanction and whether, because of that action, such sanctioned parties would not be reliable parties to export or reexport transactions subject to the EAR.

License requirements imposed pursuant to § 744.20 are foreign policy controls imposed pursuant to the provisions of § 6 of the Export Administration Act of 1979. License requirements pursuant to § 744.20 will be imposed by adding the sanctioned entity to the Entity List (Supplement No. 4 to part 744). The Entity List entry will also refer to § 744.20, state the license requirements that apply to the entity, what license exceptions, if any, are available, and the licensing policy that applies to the entity.

Addition of an Entity to the Entity List Pursuant to New § 744.20

This rule imposes a license requirement under new § 744.20 for exports or reexports to Tula Instrument Design Bureau (all locations including at Tula 300001, Russia) of the government of the Russian Federation (Tula) for all items subject to the EAR having a classification other than EAR99, prohibits use of any License Exception for such exports or reexports, and imposes a general policy of denial for all license applications to export or reexport to Tula. The rule adds Tula to the Entity List (Supplement No. 4 to part 744 of the EAR).

On April 21, 1999, the State Department found, *inter alia,* that Tula was a Government of Russia entity that was specifically involved in the transfer of lethal military equipment to a country determined by the Secretary of State to be a state sponsor of terrorism. Because of that finding, the State Department determined that ''the policy of the United States Government [is] to deny U.S. Government Assistance to [Tula]'' (*see* 64 FR 23148, April 29, 1999). BIS is imposing this license requirement, prohibition on use of license exceptions, and policy of denial, to further the foreign policy interest of the United States in deterring the transfer of lethal military equipment to state sponsors of terrorism.

This action is a new foreign policy control imposed pursuant to the requirements of § 6 of the Export Administration Act and requires a report to Congress. The report was delivered to Congress on February 25, 2005.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Savings Clause

Exports and reexports that did not require a license or that were eligible for a License Exception prior to publication of this rule and for which this rule imposes a new license requirement or removes that License Exception availability may be made without a license or under that License Exception if the items being exported or reexported were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export or reexport on or before March 22, 2005, and exported or reexported on or before April 6, 2005. Any such exports or reexports not meeting those deadlines require a license in accordance with this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not impacted by this regulation. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. However, BIS is issuing this rule in interim final form with a request for comments.

Request for Comments

BIS is seeking public comments on this interim final rule. The period for submission of comments will close May 6, 2005. BIS will consider all comments received on or before that date in developing any final rule. Comments received after that date will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ For the reasons set forth in the preamble, part 744 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

■ 2. In § 744.1, add two sentences immediately following the eighth sentence in paragraph (a)(1) and revise the third sentence of paragraph (c) to read as follows:

§ 744.1 General provisions.

(a)(1) *Introduction.* * * * Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in Supplement No. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in Supplement No. 4 to this part. * * *

* * * * *

(c) * * * No License Exceptions are available for exports and reexports to listed entities of specified items, except License Exceptions for items listed in § 740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, and in the case of entities added to the Entity List pursuant to § 744.20, to the extent specified on the Entity List.

■ 3. In part 744, add § 744.19 to read as follows:

§ 744.19 Licensing policy regarding persons sanctioned pursuant to specified statutes.

Notwithstanding any other licensing policy elsewhere in the EAR, BIS will deny any export or reexport license application if the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user is subject to one or more of the sanctions described in paragraphs (a), (b), and (c) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if such party is subject to a sanction described in paragraph (d) of this section.

(a) A sanction issued pursuant to the Iran-Iraq Arms Nonproliferation Act of 1992 (Public Law 102–484) that prohibits the issuance of any license to or by the sanctioned entity.

(b) A sanction issued pursuant to the Iran Nonproliferation Act of 2000 (Public Law 106–178) that prohibits the granting of a license for the transfer to foreign entities of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended, and as carried out by Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of items controlled pursuant to the Export Administration Act of 1979.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (Missile Technology Control Act of 1990), and as carried out by an Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979.

■ 4. In part 744, add § 744.20 to read as follows:

§ 744.20 License requirements that apply to certain sanctioned entities.

BIS may impose, as foreign policy controls, export and reexport license requirements and set licensing policy with respect to certain entities that have been sanctioned by the State Department. Such license requirements and policy are in addition to those imposed elsewhere in the EAR. License requirements and licensing policy may be imposed pursuant to this section even when the sanction and the legal authority under which the State Department imposed the sanction do not require or authorize the imposition of any license requirement or licensing policy. License requirements and licensing policy will be imposed pursuant to this section by adding an entity to the Entity List in accordance with paragraphs (a), (b), and (c) of this section.

(a) *General requirement.* Certain entities that have been sanctioned by the State Department are listed in Supplement No. 4 to this part (the Entity List) with a reference to this section. A license is required, to the extent specified on the Entity List, to export or reexport any item to such entities.

(b) *License exceptions.* No license exception may be used to export or reexport to such entities unless specifically authorized on the Entity List.

(c) *Licensing policy.* Applications to export or reexport to such entities will be reviewed according to the licensing policy set forth on the Entity List.

■ 5. In Supplement No. 4 to part 744 add a new entry for the Tula Instrument Design Bureau under Russia, immediately following the entry for Moscow Aviation Institute as follows:

SUPPLEMENT NO. 4 TO PART 744.—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
	Tula Instrument Design Bureau (all locations, including at Tula 300001, Russia) (§ 744.20 of the EAR).	All items subject to the EAR having a classification other than EAR99; no License Exceptions available.	Presumption of Denial	[F. Reg. Citation], 03/07/05.

Dated: March 2, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–4325 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, 178 and 191

[CBP Dec. 05–07]

RIN 1505–AB47

United States-Chile Free Trade Agreement

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs and Border Protection (''CBP'') Regulations on an interim basis to implement the preferential tariff treatment and other customs-related provisions of the United States-Chile Free Trade Agreement entered into by the United States and the Republic of Chile.

DATES: Interim rule effective March 7, 2005; comments must be received by June 6, 2005.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (''RIN'') and/or by the title ''United States-Chile Free Trade Agreement,'' by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site. The Department of Homeland Security (''DHS''), including CBP, has joined the Environmental Protection Agency (''EPA'') online public docket and comment system on its Partner Electronic Docket System (''Partner EDOCKET''). As an agency of the DHS, CBP will use the EPA Federal Partner EDOCKET system.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail, hand delivery or courier: paper, disk or CD–ROM submissions may be mailed or delivered to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number (if available) or RIN number for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Robert Abels, Office of Field Operations, (202) 344–1959.

Other Operational Aspects: Lori Whitehurst, Office of Field Operations, (202) 344–2722.

Audit Aspects: Mark Hanson, Office of Regulatory Audit, (202) 344–2877.

Legal Aspects: Edward Leigh, Office of Regulations and Rulings, (202) 572–8827.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2003, the United States and the Republic of Chile (the ''Parties'') entered into an agreement, the U.S.-Chile Free Trade Agreement (''US-CFTA''). The stated objectives of the US-CFTA are to: Encourage expansion and diversification of trade between the Parties; eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; substantially increase investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the US-CFTA, for its joint administration and for the resolution of disputes; and establish a framework for further bilateral and multilateral cooperation to expand and enhance the benefits of the US-CFTA.

The provisions of the US-CFTA were adopted by the United States with the enactment of the United States-Chile Free Trade Agreement Implementation Act (the ''Act''), Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note)(2003).

Customs and Border Protection (CBP) has the responsibility to administer the provisions of the US-CFTA and the Act which relate to the importation of goods into the United States from Chile. Those customs-related US-CFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin and Origin Procedures) and Chapter Five (Customs Administration).

The tariff-related provisions within US–CFTA Chapter Three which require regulatory action by CBP are Article 3.7 (Temporary Admission of Goods), Article 3.8 (Drawback and Duty Deferral Programs), Article 3.9 (Goods Re-Entered after Repair or Alteration), Article 3.10 (Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials) and Article 3.20 (Rules of Origin and Related Matters).

Chapter Four of the US-CFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States or Chile (US-CFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 4.1 and Annex 4.1 of the US-CFTA. Under Article 4.1 within that Chapter, originating goods may be grouped in three broad categories: (1) Goods which are wholly obtained or produced entirely in one or both of the Parties; (2) goods which are produced entirely in those countries and which satisfy the specific rules of origin in US-CFTA Annex 4.1 (change in tariff classification requirement and/or regional value content requirement); and (3) goods which are produced entirely in one or both of the Parties exclusively from materials that originate in those countries. Article 4.2 sets forth the methods for calculating the regional value content of a good. Article 4.3 sets forth the rules for determining the value of materials for purposes of calculating the regional value content of a good and applying the *de minimis* rule. Article 4.4 sets forth the rules for determining whether accessories, spare parts or tools delivered with a good qualify as material used in the production of such good. Article 4.6 provides for accumulation of production by two or more producers. Article 4.7 provides a *de minimis* criterion. The remaining Articles within Section A of Chapter

Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations. The basic rules of origin in Chapter Four of the US-CFTA are set forth in General Note 26, Harmonized Tariff Schedule of the United States (HTSUS). In addition, Section B of Chapter Four sets forth the procedural requirements which apply under the US-CFTA, in particular with regard to claims for preferential tariff treatment.

Chapter Five sets forth the customs operational provisions related to the implementation and continued administration of US-CFTA.

In order to provide transparency and facilitate their use, the majority of the US-CFTA implementing regulations set forth in this document have been included within new subpart H in Part 10 of the CBP Regulations (19 CFR). However, in those cases in which US-CFTA implementation is more appropriate in the context of an existing regulatory provision, the US-CFTA regulatory text has been incorporated in an existing Part within the CBP Regulations. In addition, this document sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new US-CFTA implementing regulations. The regulatory changes are discussed below in the order in which they appear in this document.

To create new subpart H of 19 CFR part 10, the existing sections in that part have been re-designated into subparts A through G.

Discussion of Amendments

Part 10

Section 10.31(f) concerns temporary importations under bond. It is amended by adding a sentence at the end stating that, as regards the goods described in the added sentence, no bond or other security will be required in the case of goods originating in Chile. The provisions of US-CFTA Article 3.7 (temporary admission of goods) are already reflected in existing temporary importation bond or other provisions contained in part 10 of the CBP Regulations and in Chapter 98 of the HTSUS.

Part 10, Subpart H

General Provisions

Section 10.401 outlines the scope of new subpart H, part 10. This section also clarifies that, except where the context otherwise requires, the requirements contained in subpart H, part 10 are in addition to general administrative and enforcement provisions set forth elsewhere in the CBP Regulations. Thus, for example, the specific merchandise entry requirements contained in subpart H, part 10 are in addition to the basic entry requirements contained in parts 141–143 of the regulations.

Section 10.402 sets forth definitions of common terms used in multiple contexts or places within subpart H, part 10. Although the majority of the definitions in this section are based on definitions contained in Article 2.1 and Annex 2.1 of the US-CFTA or in § 3 of the Act, other definitions have also been included to clarify the application of the regulatory texts. Additional definitions which apply in a more limited subpart H context are set forth elsewhere with the substantive provisions to which they relate.

Import Requirements

Section 10.410 sets forth the procedure for claiming US-CFTA tariff benefits at the time of importation and, as provided in US-CFTA Article 4.12, requires a U.S. importer to file a declaration, and to correct a declaration that contains incorrect information, in connection with the claim. Section 10.410 also implements US-CFTA Article 4.12 by requiring that the declaration that the goods are US-CFTA originating goods be based on a certification of origin which is in the possession of the importer.

Section 10.411 implements US-CFTA Article 4.14 which concerns the obligations of an importer regarding the submission of a certification of origin to CBP and the maintenance of the certification and other relevant records regarding the imported good. Included in § 10.411 is a provision that a certification of origin may be used either for a single importation or for multiple importations of identical goods.

Section 10.416, which is based on US-CFTA Article 4.16, authorizes the denial of US-CFTA tariff benefits if the importer fails to comply with the requirements of Subpart H, Part 10.

Tariff Preference Level

Sections 10.420 and 10.421, which are based on US-CFTA Article 3.20, require an importer claiming preferential tariff treatment under a tariff preference level (TPL) to make a statement containing information demonstrating that a good satisfies the requirement for entry under the TPL.

Export Requirements

Section 10.430 implements US-CFTA Article 4.15 which concerns use of a certification of origin for purposes of certifying that an exported good is an originating good and thus entitled to preferential tariff treatment under the US-CFTA. This section also implements US-CFTA Article 4.15.3 which requires an exporter or producer to promptly provide written notification of errors in a certification to any person to whom the certification was given.

Section 10.430 concerns the maintenance of records by a U.S. exporter or producer who executes a certification of origin, as required by US-CFTA Article 4.15 and by 19 U.S.C. 1508 as amended by § 207 of the Act. Section 10.430 also concerns the availability of those records both to CBP and to the Chilean customs administration.

Section 10.431 concerns measures applied for a failure of a U.S. exporter or producer to comply with a requirement of subpart H, part 10 and is based on US-CFTA Article 4.16.

Post-Importation Duty Refund Claims

Sections 10.440 through 10.442 implement US-CFTA Article 4.12, which allows an importer, who did not claim US-CFTA tariff benefits on a qualifying good at the time of importation, or a non-qualifying apparel good claiming a TPL, to apply for a refund of any excess duties at any time within one year after the date of importation. Such a claim may be made even if liquidation of the entry would otherwise be considered final under other provisions of law.

Rules of Origin

Sections 10.450 through 10.463 provide the implementing regulations regarding the rules of origin provisions of HTSUS General Note 26 and US-CFTA Chapter Four.

Definitions

Section 10.450 sets forth terms that are defined for purposes of the Rules of Origin.

General Rules of Origin

Section 10.451 sets forth the basic rules of origin established in Chapter Four of the US-CFTA. The provisions of § 10.451 apply both to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under General Note 26, HTSUS.

Section 10.451(a) lists those goods which are originating goods because they are wholly obtained or produced entirely in the U.S., Chile, or both. Section 10.451(c) provides that goods, produced entirely in the U.S. or Chile from originating materials, are originating goods.

Section 10.451(b) sets forth the basic rules of origin for goods which are produced with any non-originating material content. Essential to the rules in § 10.451(b) are the specific rules of General Note 26(n), HTSUS, which are incorporated by reference. Under paragraph (b)(1) of § 10.451, a good will qualify as an originating good only if all non-originating materials used in the production of the good undergo the applicable change in tariff classification, set forth in General Note 26(n), as a result of processing performed entirely in the US-CFTA countries. Under paragraph (b)(2) of § 10.451, a regional value content requirement must be satisfied in addition to a change in tariff classification for certain cases as specified by the rules of General Note 26(n), and, for other cases, only a regional value content must be satisfied. In all cases, the good must also satisfy all other requirements of the note.

Section 10.452 sets forth the rule that a good or material is not an originating good or material as a result of simple combining or packaging operations or mere dilution with a substance that does not materially alter the characteristics of the good or material.

Value Content

Section 10.454 sets forth the basic rules which apply for purposes of determining whether an imported good satisfies a minimum regional value content (RVC) requirement. Section 10.455 sets forth the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the *de minimis* rules.

Accessories, spare parts or tools. Section 10.456 specifies when certain accessories, spare parts or tools will be treated as a material used in the production of the good.

Fungible goods and materials. Section 10.457 sets forth the rules by which ''fungible'' goods or materials may be claimed as originating.

Accumulation of Production

Section 10.458 sets forth the rule by which originating goods or materials from the territory of Chile or the United States that are used in the production of a good in the territory of the other country will be considered to originate in the territory of such other country. In addition, this section also establishes that a good that is produced by one or more producers in the territory of Chile or the United States, or both, is an originating good if the good satisfies all of the applicable requirements of the rules of origin of the US-CFTA.

De Minimis

Section 10.459 sets forth a *de minimis* rule by which goods that fail to qualify as originating under the rules in § 10.451 may be considered originating goods for preferential tariff treatment. There are a number of exceptions to the *de minimis* rule as well as a separate rule for textile and apparel goods.

Indirect materials. Section 10.460 provides that indirect materials are considered to be originating materials without regard to where they are produced.

Packaging materials; packing materials. Sections 10.461 and 10.462 provide that retail packaging materials and packing materials for shipment are to be disregarded with respect to their actual origin for purpose of the change in tariff classification requirement of the General Note 26(n). These sections also set forth the treatment of packaging and packing materials for purposes of the regional value content requirement of the note.

Transshipment

Section 10.463 sets forth the rule that with certain exceptions, an originating good loses its originating status and is treated as a non-originating good if, subsequent to the production in a US-CFTA country that qualifies the good as originating, the good undergoes production in a territory outside that of a US-CFTA country.

Origin Verifications and Determinations

Sections 10.470 through 10.474 implement the provisions of US-CFTA Article 4.16 which concerns the conduct of verifications to determine whether imported goods are originating goods entitled to US-CFTA preferential duty treatment and the issuance and application of origin determinations resulting from such verifications. These sections also govern the conduct of verifications directed to producers of materials that are used in the production of a good for which US-CFTA preferential duty treatment is claimed.

Section 10.470 provides for the verification by CBP of a claim for US-CFTA tariff treatment and any information submitted in support of the claim. This section further provides that, if CBP is prevented from conducting a verification, the claim may be denied.

Section 10.471 provides for textile and apparel goods imported into the United States to be reviewed by Chilean authorities (at the request of CBP), regardless of whether a claim is made for preferential tariff treatment. CBP may also assist in a verification in Chile under this section.

Section 10.471 also provides for specific actions to be taken during and after the verification if directed by the Committee for the Implementation of Textile Agreements. These actions can be taken on the specific goods subject to the verification or to similar goods, or to any textile or apparel goods being imported into the United States by the entity subject to the verification.

Section 10.472 provides for textile and apparel goods exported from the United States to Chile to be reviewed by CBP (at the request of Chilean authorities),

Section 10.473 implements US-CFTA Article 4.16.3 by providing for the issuance of a written determination of origin based on an analysis of the results of the origin verification. This section also prescribes the information required to be included in the written determination and includes special content and issuance requirements in the case of a negative origin determination.

Penalties

Section 10.480 concerns the general application of penalties to US-CFTA transactions and is based on US-CFTA Article 5.9.

Section 10.481 reflects US-CFTA Article 4.16 with regard to exceptions to the application of penalties in the case of an importer who voluntarily makes a corrected declaration (as provided for in US-CFTA Article 4.12—see § 10.410(b)).

Section 10.482 reflects US-CFTA Article 4.15 with regard to exceptions to the application of penalties in the case of an exporter or producer who voluntarily provides notice of an incorrect certification of origin (*see* § 10.411). Section 10.483, which sets forth standards for determining whether the correction or notice is effected ''voluntarily'', is based on the standards applied for prior disclosures under 19 U.S.C. 1592 as set forth in § 162.74 of the CBP Regulations.

Goods Returned After Repair or Alteration

Section 10.490 implements US-CFTA Article 3.9 regarding duty treatment on goods re-entered after repair or alteration in Chile.

Part 24

A paragraph is added to § 24.23(c), which concerns the merchandise processing fee (MPF) to implement § 204 of the US-CFTA, providing that the MPF is not applicable to goods that qualify as originating goods as provided for in the US-CFTA.

Part 162

Part 162 contains regulations regarding the inspection and examination of merchandise involved in importation. A cross-reference is added to § 162.0, which is the scope section of the part, to refer readers to the additional US-CFTA records maintenance and examination provisions contained in new subpart H, part 10.

Part 163

A conforming amendment is made to § 163.1 to include the completion of a Chile certification of origin and any other supporting documentation pursuant to the US-CFTA as an activity for which records must be maintained. Also, the list appearing in Appendix to § 163 (commonly known as the (a)(1)(A) list) is also amended to add the Chile certification of origin, required by new § 10.410.

Part 178

Part 178 sets forth the control numbers assigned to information collections of CBP by the Office of Management and Budget, pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The list contained in § 178.2 is amended to add the information collections used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act.

Part 191

Part 191 contains regulations regarding drawback. A cross-reference is added to § 191.0, which is the scope section of the part, to refer readers to the additional US-CFTA drawback provisions contained in new subpart H, part 10.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to CBP by e-mail, mail, hand delivery or courier, including comments on the clarity of these interim regulations and how they may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 103.11(b) of the CBP Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768. Comments may also be accessed on the EPA Partner EDOCKET Web site or Federal eRulemaking Portal. For additional information on accessing comments via the EPA Partner EDOCKET Web site or Federal eRulemaking Portal, see the **ADDRESSES** section of this document.

Inapplicability of Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies amending their regulations generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, consider public comments in deciding on the final content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard notice and comment procedures and requirement for a delayed effective date do not apply to agency rulemaking that involves the foreign affairs function of the United States. CBP has determined that these interim regulations involve the foreign affairs function of the United States, as they implement preferential tariff treatment and related provisions of the US-CFTA.

In addition, section 553(b)(B) of the APA provides that notice and public procedure are not required when an agency for good cause finds them impracticable, unnecessary, or contrary to the public interest. CBP finds that providing notice and public procedure for these regulations would be impracticable, unnecessary, and contrary to the public interest because they establish procedures that the public needs to know in order to claim the benefit of a tariff preference under the Act. The US-CFTA went into effect on January 1, 2004, and the importing public needs the certainty of regulations as soon as possible.

Finally, section 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. For the reasons described above, CBP has determined that these regulations grant an exemption and relieve restrictions and that good cause exists for dispensing with a delayed effective date.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117.

The collections of information in these regulations are in §§ 10.410 and 10.411. This information is required in connection with claims for preferential tariff treatment and for the purpose of the exercise of other rights under the US-CFTA and the Act and will be used by CBP to determine eligibility for a tariff preference or other rights or benefits under the US-CFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting burden: 8,000 hours.

Estimated average annual burden per respondent: 0.2 hours.

Estimated number of respondents: 40,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information and the accuracy of the estimated annual burden, and suggestions for reducing that burden, should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document is Fernando Peña, Attorney, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices and the Department of the Treasury participated in its development.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or her/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements (United States-Chile Free Trade Agreement).

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Export, Import, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 191

Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 is revised, and the specific authority for new subpart H is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

■ 2. Sections 10.1 through 10.183 are designated as new Subpart A and a subpart heading is added previous to the undesignated heading ''Articles Exported and Returned'' to read as follows:

Subpart A—General Provisions

* * * * *

■ 3. Sections 10.191 through 10.199 are designated as new Subpart B, the undesignated heading ''Caribbean Basin Initiative'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart B—Caribbean Basin Initiative

* * * * *

■ 4. Sections 10.201 through 10.207 are designated as new Subpart C, the undesignated heading ''Andean Trade Preference'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart C—Andean Trade Preference

* * * * *

■ 5. Sections 10.211 through 10.217 are designated as new Subpart D, the undesignated heading ''Textile and Apparel Articles Under the African Growth and Opportunity Act'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

* * * * *

■ 6. Sections 10.221 through 10.237 are designated as new Subpart E and a subpart heading is added previous to the undesignated heading ''Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act'' to read as follows:

Subpart E—United States-Caribbean Basin Trade Partnership Act

* * * * *

■ 7. Sections 10.241 through 10.257 are designated as new Subpart F and a new subpart heading is added previous to the undesignated heading ''Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act'' to read as follows:

Subpart F—Andean Trade Promotion and Drug Eradication Act

* * * * *

■ 8. Sections 10.301 through 10.311 are designated as new Subpart G, the undesignated heading ''United States-Canada Free Trade Agreement'' is removed, and in its place, a subpart heading is added to read as follows:

Subpart G—United States-Canada Free Trade Agreement

* * * * *

■ 9. In § 10.31, paragraph (f), the last sentence is revised to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico or Chile and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating in Canada, Mexico or Chile within the meaning of General Note 12 or 26, HTSUS.

* * * * *

§ 10.36a [Amended]

■ 10. In § 10.36a, the first sentence of paragraph (a) is amended by removing the words ''(as defined in §§ 10.8 and 181.64 of this chapter)'' and adding, in their place, the words ''(as defined in §§ 10.8, 10.490 and 181.64 of this chapter)''.

■ 11. Part 10, CBP Regulations, is amended by adding a new Subpart H to read as follows:

Subpart H—United States-Chile Free Trade Agreement

General Provisions

10.401 Scope.
10.402 General definitions.

Import Requirements

10.410 Filing of claim for preferential tariff treatment upon importation.
10.411 Certification of origin.
10.412 Importer obligations.
10.413 Validity of certification.
10.414 Certification not required.
10.415 Maintenance of records.
10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

Tariff Preference Level

10.420 Filing of claim for tariff preference level.
10.421 Goods eligible for tariff preference claims.
10.422 Submission of certificate of eligibility.
10.423 Certificate of eligibility not required.
10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.
10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

Export Requirements

10.430 Export requirements.
10.431 Failure to comply with requirements.

Post-Importation Duty Refund Claims

10.440 Right to make post-importation claim and refund duties.
10.441 Filing procedures.
10.442 CBP processing procedures.

Rules of Origin

10.450 Definitions.
10.451 Originating goods.
10.452 Exclusions.
10.453 Treatment of textile and apparel sets.
10.454 Regional value content.
10.455 Value of materials.
10.456 Accessories, spare parts or tools.
10.457 Fungible goods and materials.
10.458 Accumulation.
10.459 De minimis.
10.460 Indirect materials.
10.461 Retail packaging materials and containers.
10.462 Packing materials and containers for shipment.
10.463 Transit and transshipment.

Origin Verifications and Determinations

10.470 Verification and justification of claim for preferential treatment.
10.471 Special rule for verification in Chile of U.S. imports of textile and apparel products.
10.472 Verification in the United States of textile and apparel goods.
10.473 Issuance of negative origin determinations.
10.474 Repeated false or unsupported preference claims.

Penalties

10.480 General.
10.481 Corrected declaration by importers.
10.482 Corrected certification of origin by exporters or producers.
10.483 Framework for correcting declarations and certifications.

Goods Returned After Repair or Alteration

10.490 Goods re-entered after repair or alteration in Chile.

Subpart H—United States-Chile Free Trade Agreement

General Provisions

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) entered into on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, 163 and 191 of this chapter.

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Certification.* ''Certification'' means, either when used by itself or in the expression ''certification of origin'', the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US-CFTA to an originating good;

(d) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(j) *Goods.* ''Goods'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States

or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including—

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(o) *National.* ''National'' means a natural person who has the nationality of a Party according to Annex 2.1 of the US-CFTA or a permanent resident of a Party;

(p) *Originating.* ''Originating'' means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) *Party.* ''Party'' means the United States or the Republic of Chile;

(r) *Person.* ''Person'' means a natural person or an enterprise;

(s) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the US-CFTA to an originating good;

(t) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(u) *Tariff preference level.* ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in § 10.421 of this subpart.

(v) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) *Territory.* ''Territory'' means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

Import Requirements

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol ''CL'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration, submit a letter or other written statement to the CBP office where the original declaration was filed specifying the correction and pay any duties that may be due.

§ 10.411 Certification of origin.

(a) *Contents.* An importer who claims preferential tariff treatment on a good must submit, at the request of the port director, a certification that the good qualifies as originating. A certification submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (e) of this section;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(c) *Language.* The certification must be completed either in the English or

Spanish language. If the certification is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certification.

(d) *Applicability of certification.* A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods as originating.

(e) *Preference criteria.* The preference criterion to be included on the certification as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion ''A'', refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion ''B'', refers to a good that is produced entirely in the territory of Chile or the United States, or both (*see* General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion ''C'' refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

§ 10.412 Importer obligations.

(a) *General.* An importer who makes a declaration under § 10.410(a) is responsible for the truthfulness of the declaration and of all the information and data contained in the certification, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents.

(b) *Compliance.* In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer.* The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (*see* § 10.481 of this subpart).

(d) *Internal controls.* In accordance with Part 163 of this chapter, importers are expected to establish and implement internal controls which provide for the periodic review of the accuracy of the certifications or other records referred to in paragraph (b)(1) of this section.

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 will be accepted by CBP as valid for four years from the date on which the certification was signed. If the port director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411, the importer will be given a period of not less than five business days to submit a corrected certification.

§ 10.414 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification that the good qualifies for preferential tariff treatment for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification that the good qualifies as originating. The importer must submit such a certification within 30 calendar days from the date of the written notice. Failure to timely submit the certification or information will result in denial of the claim for preferential tariff treatment.

§ 10.415 Maintenance of records.

(a) *General.* An importer claiming preferential treatment for a good imported into the United States must maintain in the United States, for five years after the date of importation of the good, a certification (or a copy thereof) that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Method of maintenance.* The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin under § 10.411(a) or submission of a corrected certification under § 10.413, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.463 were met.

Tariff Preference Level

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in § 10.421 that does not qualify as an originating good under § 10.451 may nevertheless be entitled to preferential tariff treatment under the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in § 10.421(a) or (b) or 9911.99.40 for a good described in § 10.421(c)) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.420:

(a) *Woven fabrics.* Certain woven fabrics of Chapters 52, 54 and 55 of the HTS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) *Cotton or man-made fabric goods.* Certain cotton or man-made fabric goods of Chapters 58 and 60 of the HTS that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics.[1]

(c) *Cotton or man-made apparel goods.* Cotton or man-made apparel goods in Chapters 61 and 62 of the HTS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

§ 10.422 Submission of certificate of eligibility.

(a) *Contents.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the port director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in § 10.421. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

(vi) For a single shipment, the commercial invoice number;

(vii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the port director, upon request, a written English translation of the certificate;

(d) *Applicability of certificate of eligibility.* A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment under an applicable TPL.

§ 10.423 Certificate of eligibility not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the port director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The

[1] The relevant HTS subheadings for fabric goods in Chapters 58 or 60 eligible under HTS 9911.99.20 are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44.

importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422, the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the port director, copies of documents demonstrating to the satisfaction of the port director that the requirements set forth in § 10.425 were met.

§ 10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Export Requirements

§ 10.430 Export requirements.

(a) *Submission of certification to CBP.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) *Maintenance of records*—(1) *General.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the port director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

Post-Importation Duty Refund Claims

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this part. Subject to the provisions of § 10.416 of this part, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

§ 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this part must be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this part, a copy of a certification that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law; and if any such protest or petition or request for reliquidation has been filed, the statement must identify the protest, petition or request by number and date.

§ 10.442 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.441 of this part, the port director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director will suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director will suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director will take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under § 10.441 of this part if the claim was not filed timely, if the importer has not complied with the requirements of § 10.441 of this part, if the certification submitted under § 10.441(b)(2) of this part cannot be accepted as valid (see § 10.413 of this part), or if, following initiation of an origin verification under § 10.470 of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.470 of this part.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director will deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason for the denial will be given to the importer.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director will give written notice of the denial and the reason for the denial to the importer.

Rules of Origin

§ 10.450 Definitions.

For purposes of §§ 10.450 through 10.463:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in § 10.450(m) of this subpart;

(b) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials.* ''Fungible goods or materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good.* ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10) of this section, or from their derivatives, at any stage of production;

(g) *Importer.* ''Importer'' means a person who imports goods into the territory of a Party;

(h) *Issued.* ''Issued'' means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) *Location of the producer.* ''Location of the producer'' means site of production of a good;

(j) *Material.* ''Material'' means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) *Non-originating good.* ''Non-originating good'' means a good that does not qualify as originating under this subpart;

(l) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart;

(m) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) *Remanufactured goods.* ''Remanufactured goods'' means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) *Self-produced material.* ''Self-produced material'' means a material that is produced by the producer of a good and used in the production of that good; and

(s) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) *Build-down method.* For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used by the producer in the production of the good; or

(b) *Build-up method.* For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

§ 10.455 Value of materials.

(a) *Calculating the regional value content.* For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of—

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) *Adjustments to value.* The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of Chile, the United States, or both, to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 26(n), HTSUS and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if—

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means—

(1) Averaging,

(2) ''Last-in, first-out,''

(3) ''First-in, first-out,'' or

(4) Any other method that is recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States) or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country will be considered to originate in the territory of the other country for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of § 10.451 and General Note 26, HTSUS.

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 26(n), HTSUS, will nonetheless be considered to be an originating good if—

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good because certain fibers or yarns used in the production of the

component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. A good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(n), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.454(a)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100–$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.470 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.410, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA, which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) *Assistance by CBP to Chilean authorities.* CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) *Notification to Chile.* Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) *Retention of authority by CBP.* If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of Chile.* CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Visits by CBP.* CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) *Initiation of verification by CBP.* CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) *Treatment of documents and information.* CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information

necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this section, that the good which is the subject of the verification does not qualify as an originating good, it will issue a written determination that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in the ''Rules of Origin'' heading under this subpart, the legal basis for the determination; and,

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

§ 10.474 Repeated false or unsupported preference claims.

Where CBP finds indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

Penalties

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under § 10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) *''Voluntarily'' defined.* For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in § 162.74(i) of this part have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Cases involving fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) *Written statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a written statement which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance.* For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and § 162.74 of this chapter.

Goods Returned After Repair or Alteration

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 12. The general authority citation for part 24 is revised, and the specific authority for § 24.23 continues, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332

* * * * *

■ 13. Section 24.23 is amended by adding paragraphs (c)(6) and (c)(7) to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(6) [Reserved]

(7) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Chile Free Trade Agreement Implementation Act (see also General Note 26, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 14. The authority citation for part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

■ 15. Section 162.0 is amended by adding a sentence at the end to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement are contained in Part 10, Subpart H of this chapter.

PART 163—RECORDKEEPING

■ 16. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

■ 17. Section 163.1(a)(2) is amended by re-designating paragraph (a)(2)(vi) as (a)(2)(vii) and adding a new paragraph (a)(2)(vi) to read as follows:

§ 163.1 Definitions.

* * * * *

(a) * * *

(2) * * *

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

* * * * *

■ 18. The Appendix to part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 10.410 US-CFTA Certification of origin and supporting records.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 19. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 20. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	*	*
§§ 10.410 and 10.411	Claim for preferential tariff treatment under the US-Chile Free Trade Agreement	1651–0117
*	*	*

PART 191—DRAWBACK

■ 21. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

■ 22. Section 191.0 is amended by adding a sentence at the end to read as follows:

§ 191.0 Scope.

* * * Those provisions relating to the United States-Chile Free Trade

Agreement are contained in subpart H of part 10 of this chapter.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: February 28, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–4156 Filed 3–4–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9189]

RIN 1545–BA22

Property Exempt From Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to property exempt from levy, which revise regulations currently published under Internal Revenue Code section 6334. The regulation reflects changes made by the IRS Restructuring and Reform Act of 1998 (the RRA 98) and provides guidance regarding: (1) Procedures for obtaining prior judicial approval of certain principal residence levies; (2) an exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; and (3) the applicable dollar amounts for certain exemptions. The regulation also reflects changes made by the Taxpayer Relief Act of 1997, which permits levy on certain specified payments with the prior approval of the Secretary.

DATES: *Effective Date:* These regulations are effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a final regulation amending the Procedure and Administration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986 (Code). The final regulation provides guidance reflecting the amendments to section 6334 made by RRA 98 (Public Law 105–206), and the Taxpayer Relief Act of 1997 (Public Law 105–34)(TRA 97). A notice of proposed rulemaking (REG–140378–01) was published in the **Federal Register** on August 19, 2003 (68 FR 49729). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. This final regulation adopts the provisions of the notice of proposed rulemaking with no changes.

Comments on the Proposed Regulation

None.

Modifications of the Proposed Regulation

None.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of the final regulation is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6334–1 is amended as follows:

■ 1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.

■ 2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $6,250 in value.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $3,125 in value.

* * * * *

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) *Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy*—(i) Residences in small deficiency cases. If the amount of the levy does not exceed $5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) *Principal residences and certain business assets.* Except to the extent

provided in section 6334(e), the principal residence (within the meaning of section 121) of the taxpayer and tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * * * *

(d) *Levy allowed on principal residence.* The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.

(1) *Nature of judicial proceeding.* The Government will initiate a proceeding for judicial approval of levy on a principal residence by filing a petition with the appropriate United States District Court demonstrating that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and will also ask the court to issue a notice of hearing.

(2) The taxpayer will be granted a hearing to rebut the Government's prima facie case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the Service did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer files a timely and appropriate objection, the court would be expected to enter an order approving the levy of the principal residence property.

(3) *Notice letter to be issued to certain family members.* If the property to be levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer, a letter will be addressed to ''Occupant''. The purpose of the letter is to provide notice to the family members that the property may be levied. The family members may not be joined as parties to the judicial proceeding because the levy attaches only to the taxpayer's legal interest in the subject property and the family members have no legal standing to contest the proposed levy.

(e) *Levy allowed on certain business assets.* The property described in section 6334(a)(13)(B)(ii) shall not be exempt from levy if—

(1) An Area Director of the Service personally approves (in writing) the levy of such property; or

(2) The Secretary finds that the collection of tax is in jeopardy. An Area Director may not approve a levy under paragraph (e)(1) unless the Area Director determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. When other assets of an individual taxpayer include permits issued by a State and required under State law for the harvest of fish or wildlife in the taxpayer's trade or business, the taxpayer's other assets also include future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(f) *Levy allowed on certain specified payments.* Any payment described in section 6331(h)(2)(B) or (C) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) *Inflation adjustment.* For any calendar year beginning after 1999, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (using the language ''calendar year 1998'' instead of ''calendar year 1992'' in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(h) *Effective date.* This section is generally effective with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraph (a)(11)(i) of this section is applicable with respect to levies issued after December 31, 1996. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), (f), (g) and (h) of this section apply as of March 7, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–4383 Filed 3–4–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 28

[Docket No. OAG 108; A.G. Order No. 2753–2005]

RIN 1105–AB09

DNA Sample Collection From Federal Offenders Under the Justice for All Act of 2004

AGENCY: Department of Justice, Office of the Attorney General.

ACTION: Corrections to interim rule.

SUMMARY: This document contains corrections to the interim rule published Monday, January 31, 2005, at 70 FR 4763, relating to DNA sample collection from federal offenders under the Justice for All Act of 2004. These corrections conform the references in the preamble to the actual paragraph designations in § 28.2(b)(3) and also correct a typographical error.

DATES: Effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The interim rule that is the subject of these corrections implements section 203(b) of Pub. L. 108–405, the Justice for All Act of 2004. The rule amends 28 CFR 28.2 to reflect the expansion of the class of federal offenses, conviction for which results in the collection of DNA samples from the offenders, to include all felonies.

Corrections:

1. On page 4765, in the second column, in the second full paragraph, in the eighteenth line, ''28.2(a)(1)'s'' is deleted and ''28.2(b)(1)'s'' is added in lieu thereof.

2. On page 4765, in the third column, in the first paragraph, in the sixteenth line, ''(b)(3)(A)'' is deleted and ''(b)(3)(i)'' is added in lieu thereof.

3. On page 4765, in the third column, in the first paragraph, in the thirty-first line, ''(b)(3)(A)'' is deleted and ''(b)(3)(i)'' is added in lieu thereof.

4. On page 4765, in the third column, in the second paragraph, in the fifth line, ''(b)(3)(A)'' is deleted and ''(b)(3)(i)'' is added in lieu thereof.

5. On page 4766, in the first column, in the first full paragraph, in the first line, ''(b)(3)(B)'' is deleted and ''(b)(3)(ii)'' is added in lieu thereof.

6. On page 4766, in the first column, in the first full paragraph, in the fifteenth line, ''(b)(3)(B)'' is deleted and ''(b)(3)(ii)'' is added in lieu thereof.

7. On page 4766, in the first column, in the second full paragraph, in the eighteenth line, ''(b)(3)(I)'' is deleted and ''(b)(3)(ix)'' is added in lieu thereof.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 05–4303 Filed 3–4–05; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–196]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations at 33 CFR 100.518, established for marine events held annually in the Severn River, Annapolis, Maryland by publishing the name of the events, the dates and modifying the boundaries of the regulated area. The marine events included in this rule include the Safety at Sea Seminar, U.S. Naval Academy crew races and the Blue Angels air show. This rule is intended to restrict vessel traffic in portions of the Severn River during the period of these marine events and is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective April 6, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–04–196) and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, Room 119, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 7, 2004, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD in the **Federal Register** (69 FR 234). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The regulations at 33 CFR 100.518 are enforced annually for the duration of each marine event listed in paragraph (c) of § 100.518, U.S. Naval Academy marine events. Paragraph (c) of § 100.518 lists the enforcement dates for the Safety at Sea Seminar on the last Saturday of March, the U.S. Naval Academy crew races on the third and fourth Saturday of April, and the third Friday in May, and the Blue Angels air show on the last Tuesday and Wednesday in May. Notice of exact time, date and location of the event will be published in the **Federal Register** prior to the event. The northwest and southeast boundaries of the regulated area in section 100.518 will be extended approximately 1200 yards to accommodate the aerobatic maneuvering area for the air show and encompass the rowing course for Naval Academy crew races. The U.S. Naval Academy who is the sponsor for all of these events intends to hold them annually.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing special local regulations on specified waters of the Severn River, College Creek, Weems Creek and Carr Creek. Since no comments were received, no changes to this regulation were made.

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 costs 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this action merely establishes the dates on which the existing regulations would be in effect and modifies the boundaries of the regulated area and does not impose any new restrictions on vessel traffic.

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 does not have a significant economic impact on a substantial number of small entities. This rule may effect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Severn River during the event.

This rule does not have a significant economic impact on a substantial number of small entities for the following reasons. This rule merely establishes the dates on which the existing regulations will be in effect and modify the boundaries of the regulated area and will not impose any new restrictions on vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about

this rule or any policy or action of the Coast Guard.

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 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 does not effect 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), 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 100.518, revise the section heading, paragraph (a)(1), and paragraph (c), to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

(a)(1) *Regulated area.* The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by the Route 50 fixed highway bridge and bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W thence to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

* * * * *

(c) *Effective period.* (1) This section is effective during, and 30 minutes before each of the following annual events:

(i) Safety at Sea Seminar, held on the last Saturday in March;

(ii) Naval Academy Crew Races, held on the third and fourth Saturday in April and the third Friday in May; and

(iii) Blue Angels Air Show, held on the last Tuesday and Wednesday in May.

(2) The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast

Guard District Local Notice to Mariners announcing the specific event dates and times.

* * * * *

Dated: February 14, 2005.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–4299 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–05–010]

RIN 1625–AA08

Special Local Regulations; Rowing Regattas, Indian Creek, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary special local regulations for several rowing regattas on Indian Creek, in the vicinity of the 63rd Street Bridge, Miami Beach, Florida. This rule is necessary to insure the safety of life of participants and spectators in the regatta area. This rule is intended to restrict vessels from entering the regulated area during the events unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative. The rule further prohibits anchoring or mooring in the regulated area during the events.

DATES: This rule is effective from 8 a.m. on March 6, 2005 through 2 p.m. on April 29, 2005.

ADDRESSES: Documents indicated in the preamble as being available in the docket, are part of docket [CGD07–05–010] and are available for inspection or copying at Coast Guard Sector Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn or BMC R. Terrell, Coast Guard Sector Miami, Florida, at (305) 535–4317.

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. One sponsor of the event was unable to provide complete information about the event until January 31, 2005, and this did not allow enough time for an NPRM and a comment period. Delaying this rule would be contrary to the public interest as the special local regulations are needed to ensure the safety of spectators and regatta participants during the event, and immediate action is necessary to prevent possible loss of life or property.

Under 5 U.S.C. 553(d)(3), for the same reasons articulated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–05–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received and may change the rule in view of them.

Background and Purpose

Miami Beach Watersports Center, Inc. and the University of Miami are separately sponsoring several rowing regattas on March 6, March 12, and April 29, 2005 from 8 a.m. until 2 p.m. These regattas share a common regatta area on Indian Creek in Miami Beach, Florida. The regatta area extends from 1 nm south of the 63rd Street Bridge to the entrance of Surprise Lake, Miami Beach, Florida. The race organizers anticipate 200 participants. Event races will take place to one side of the waterway and participant vessels will use the other side of the waterway to return along the length of the racecourse once each race is complete. Recreational vessels and fishing vessels normally operate in the waters being regulated. This rule is required to provide for the safety of life on navigable waters because of the inherent dangers associated with rowing races and dangers imposed by non-participant vessels. The rule prohibits non-participant vessels from entering the regulated race area on Indian Creek, Miami Beach, Florida during the event unless authorized by the Captain of the Port, Miami, Florida, or his designated representative. Anchoring and mooring within the regulated area will also be prohibited.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated area unless authorized by the Coast Guard Captain of the Port or his designated representative.

The regulated area encompasses all waters of Indian Creek from one nautical mile south of the 63rd Street Bridge to the entrance of Surprise Lake. No anchoring will be permitted in the regulated area.

This rule will be effective from 8 a.m. on March 6, 2005 through 2 p.m. on April 29, 2005 to cover all three crew regattas, however the regulated area will only be enforced from 8 a.m. to 2 p.m. on each of the event dates of March 6, March 12 and April 29, 2005.

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 costs 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This event is a stationary event, and the regulated area will only be enforced for approximately 6 hours on each event day (March 6, March 12, and April 29) during which non-participant vessels will still be allowed to transit the area with permission of the Capt of the Port, Miami or his designated representative.

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 would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the regulated area from 8 a.m. to 2 p.m. on March 6, March 12, and April 29, 2005. These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will only be enforced for approximately 6 hours on each of the three event days at a time of day when vessel traffic is low. Vessel traffic will still be allowed to transit the regulated area with the permission of the Captain of the Port, Miami or his designated representative.

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 this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the persons listed under **FOR FURTHER INFORMATION** for assistance in understanding this rule.

Small business 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 would call 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would 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 would not create an environmental risk to health or risk to safety that might 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 would 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), 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)(h), of the Instruction, from further environmental documentation. As special local regulations established in conjunction with a regatta, this rule fits within paragraph (34)(h). Under figure 2–1, paragraph (34)(h), 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 a.m. on March 6, 2005 through 2 p.m. on April 29, 2005 add temporary § 100.T07–010 to read as follows:

100.T–07–010 2005 Special Local Regulations; Rowing Regattas; Indian Creek, Miami Beach, FL

(a) *Regulated area.* (1) The regulated area encompasses all waters from shore to shore, located on Indian Creek from one nautical mile south of the 63rd Street Bridge to the entrance of Surprise Lake, Miami Beach, Florida.

(2) Races will be conducted on the western side of the regulated area with race participants returning along the length of the racecourse via the eastern side of the regulated area.

(b) *Regulations.* In accordance with § 100.35 of this part, all vessels and persons are prohibited from anchoring, mooring, or entering into the regulated area unless authorized by the Coast Guard Captain of the Port, Miami, Florida or his designated representative. Persons desiring to enter into or transit the regulated area may seek permission from the Captain of the Port of Miami via telephone, at (305) 535–8701, or from his designated representative on-scene. All persons and vessels within the regulated area must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Definitions.* Designated representative 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), Miami, Florida, in the enforcement of the special local regulations.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 2 p.m. on March 6, March 12, and April 29, 2005.

Dated: February 16, 2005.

W.E. Justice,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 05–4294 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R04–OAR–2004–TN–0003–200428(a); FRL–7881–7]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Nashville, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION : Direct final rule.

SUMMARY: The United States Environmental Protection Agency is approving the section 111(d) /129 plan submitted by Tennessee for the Pollution Control District (PCD) of the Metro Public Health Department for Nashville/Davidson County on May 28, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units that commenced construction on or before November 30, 1999.

DATES: This direct final rule will be effective May 6, 2005 unless EPA receives adverse comments by April 6, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–TN–0003, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: Majumder.joydeb@epa.gov.*

4. *Fax:* (404) 562–9164.

5. *Mail:* ''R04–OAR–2004–TN–0003,'' Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier.* Deliver your comments to: Joydeb Majumder, Air Toxics and Monitoring Branch 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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. R04–OAR–2004–TN–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Melissa Krenzel at (404) 562–9196 or Joydeb Majumder at (404) 562–9121.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, arsenic, beryllium, chromium, hydrocarbons, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by Tennessee for the PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

Tennessee submitted to EPA on May 28, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in Nashville/Davidson County: Public Hearings; Inventory of Affected CISWI Units; Regulation No. 17, ''Regulation For Control of Commercial and Industrial Solid Waste Incineration Units''; Emission Inventories of Affected CISWI Units; Enforceable Mechanism for Implementing the EG; Submittal of Progress Reports to EPA; and Demonstration of Authority to Carry Out the Plan.

The approval of the PCD's Nashville/Davidson County State Plan is based on finding that: (1) PCD provided adequate public notice of public hearings for the EG for CISWIs, and (2) PCD also demonstrated legal authority to adopt emission standards and compliance schedules to designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping and to make inspections and conduct tests of designated facilities; and authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amount of emissions from such facilities.

PCD cites the following references for the legal authority: the Tennessee Code Annotated (TCA), in 68–201–115, gives Metro Public Health Department the authority to adopt and enforce laws for the control of air pollution as long as those laws are not less stringent than those of the State of Tennessee. Article 10, ''Public Health and Hospitals,'' Chapter 1, ''Public Health,'' Sections 10.101 through 10.104 of the Charter of the Metropolitan Government empowers the Board to adopt regulations having the force of law for the control of air pollution. The Metropolitan Code of Laws (MCL), Chapter 10.56, ''Air Pollution Control,'' Section 10.56.090, ''Board—Powers and Duties'' and Section 10.56.150, ''Nuisance Declared—Injunctive Relief'' give the Board the legal authority to enforce relevant laws, regulations, standards, and compliance schedules, and to seek injunctive relief. MCL Chapter 10.56, ''Air Pollution Control,'' Section 10.56.290, ''Measurement and Reporting of Emissions'' gives the Board the legal authority to obtain the necessary information to determine compliance, require recordkeeping, make inspections, and conduct tests and to require the use of monitors and the submittal of emission reports. Tennessee Statute, TCA 10–7–503, ''Records Open to Public Inspection—Exceptions'' and 10–7–504, ''Confidential Records'' and MCL, Section 2.36.130, ''Records and Proceedings—Public Inspection Authorized When'' provide the authority to make available to the public any emission data submitted by CISWI facilities.

An enforcement mechanism is a legal instrument by which the PCD can enforce a set of standards and conditions. PCD has adopted the model rule from 40 CFR part 60, subpart DDDD, as Regulation No. 17, ''Regulation for Control of Commercial and Industrial Solid Waste Incineration Units which Commenced Construction On or Before November 30, 1999.'' Therefore, PCD's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Regulation No. 17. On the basis of these statutes and rules of the Metropolitan Board of Health, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

PCD adopted all emission standards and limitations applicable to existing CISWI units. These standards and limitations have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

PCD submitted the compliance schedule for CISWIs under their jurisdiction in Nashville/Davidson County. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

PCD submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in Nashville/Davidson County. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

PCD includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix 3 of the State Plan. In Appendix 3, PCD also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective

as Federal requirements for existing CISWI units. PCD will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting. This action approves the State Plan submitted by PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

III. Final Action

This action approves the State Plan submitted by Tennessee for the PCD for Nashville/Davidson County to implement and enforce subpart DDDD, as it applies to existing CISWI units only. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 6, 2005 without further notice unless the Agency receives adverse comments by April 6, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 6, 2005 and no further action will be taken on the 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.

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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan 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. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: February 11, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart RR—Tennessee

■ 2. Subpart RR is amended by adding an undesignated center heading and § 62.10630 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.10630 Identification of sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999, in Nashville/Davidson County.

[FR Doc. 05–4337 Filed 3–4–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 04–53; FCC 04–194; DA 05–331]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of list of wireless domain names now available to public.

SUMMARY: In this document the Consumer & Governmental Affairs Bureau, on delegated authority from the Federal Communications Commission (Commission), announces the publication of the list of wireless domain names, in accordance with an order previously approved by the Commission and information collections requirements previously approved by the Office of Management and Budget, both of which were already published in the **Federal Register**.

DATES: Persons or entities sending Mobile Service Commercial Messages without prior express authorization from individual wireless subscribers must comply by March 10, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), or e-mail *Kelli.Farmer@fcc.gov*.

SUPPLEMENTARY INFORMATION: On August 12, 2004, the Commission released an *Order*, *In the Matter of Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, FCC 04–194, published at 69 FR 55765, September 16, 2004 and most of the rules were effective October 18, 2004. On December 15, 2003, OMB approved the remaining rules, 47 CFR 64.3100(a)(4), (d), (e) and (f), for three years. OMB Control No. 3060–1078. On December 17, 2004, the Consumer & Governmental Affairs Bureau issued a notice of the effective date of the rules, gave a deadline for Commercial Mobile Radio Service (CMRS) carriers to supply the required information, and stated that the Commission would issue a second public notice announcing the date on which senders and the general public will have access to the list, 69 FR 77141, December 27, 2004. The notice stated further, as did the Order itself that senders would then have an additional thirty (30) days from the date that the list becomes publicly available to comply with the rules.

Synopsis

On February 7, 2005, the Federal Communications Commission (Commission) first made available to the public a list of wireless domain names that are used to transmit electronic messages to subscribers of commercial mobile service, such as cellular service, Personal Communications Service (PCS) and enhanced Specialized Mobile Radio Services (SMRS). This list is published in accordance with the Commission's Order implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN–SPAM Act (*Order*).

The *Order* adopted rules to protect wireless subscribers from unwanted commercial electronic mail messages. Specifically, the rules prohibit initiating or sending most electronic commercial messages to any address associated with subscription to wireless service, unless the individual addressee has given the sender express prior authorization. To assist senders of commercial messages in identifying the addresses that belong to wireless subscribers, the *Order* required first that wireless service providers supply the FCC with the names of the relevant mail domain names.

The list of wireless mail domain names can be seen and downloaded in several formats from *http://www.fcc.gov/cgb/policy* by clicking on ''Download Registered Domain Names.'' The list includes the portions of electronic mail addresses that can be found after the ''@'' symbol in wireless subscriber addresses, used for sending both text messages and e-mail. Some CMRS providers have supplied full mail domain names, which take up all the characters to the right of the ''@'' symbol in such addresses, while others have listed subdomain names used for wireless service. (For example, if a wireless subscriber's e-mail address was *JohnDoe@mobile.fcceg.gov*, the carrier could have registered ''mobile.fcceg.gov.'' Alternatively, the carrier could have registered ''fcceg.gov,'' as long as all such subscriber addresses including that domain name would be for commercial mobile service. Hence, the prohibition applies for all subscriber addresses that include any listed subdomain or domain name. For example, a listing of ''fcceg.gov'' would cover all subscribers with ''fcceg.gov'' in their electronic addresses, including *JohnDoe@fcceg.gov*, *JohnDoe@mobile.fcceg.gov* and *JohnDoe@sms.fcceg.gov*.) The prohibition discussed below applies to all electronic addresses that include the mail domain names in this list, whether they be the full mail domain name used in the address or just the portion of the name furthest to the right.

As explained in the *Order*, senders of mobile service commercial messages (MSCMs) have thirty (30) days from the date the list became publicly available to comply with the prohibition on initiating MSCMs to any electronic mail address that references any domain names on the list, unless they have received express prior authorization or the message falls under any other exceptions to the rule. A commercial message is presumed to be an MSCM if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC's wireless domain names list. We remind senders that any person or entity that initiates or sends a message to an address that they *otherwise know* to be associated with a wireless subscription will be in violation of our rules, regardless of how long the domain name has been on the published list We note also that the prohibition applies only to ''commercial electronic mail messages'' as they are defined in our rules, not to ''transactional or relationship'' messages, such as those sent regarding product safety or security information, notification to facilitate a commercial transaction, and notification about changes in terms, features, or the customer's account status.

The official list, which includes the date that each mail domain name was added to the list, will be updated regularly. Those members of the public who rely upon the list to identify wireless domain names are urged to check the list monthly. A paper version will be available at the Commission's headquarters in Washington, DC. Any party who cannot access the list electronically and needs to view a paper

version should contact the Commission's Consumer & Governmental Affairs Bureau. Anyone that believes a domain name has been omitted or added in error should contact the Bureau as well.

On December 17, 2004, the Commission issued a *public notice* announcing that Commercial Mobile Radio Service (CMRS) carriers were required to submit their wireless domain names used for the applicable wireless messaging services to the Commission for inclusion in a wireless domain names database. The deadline for initial submissions was January 21, 2005. (We note that it was recently brought to our attention that this earlier public notice, 69 FR 77141, December 27, 2004, contained a typographical error in that it listed the January 21, 2005 deadline as January 21, 2004. While we do not believe that it caused any confusion for carriers, we ask that any carrier that experienced difficulty complying with the rules because of the error contact the Policy Division immediately). Further, CMRS carriers are responsible for the continuing accuracy and completeness of information furnished for the wireless domain names list.

As provided in 47 CFR 64.3100, no person or entity may initiate any mobile service commercial message unless:

(1) That person or entity has the express prior authorization of the addressee as described in 47 CFR 64.3100(d); or

(2) That person or entity is forwarding that message to its own address; or

(3) That person or entity is forwarding to an address provided that (i) the original sender has not provided any payment, consideration or other inducement to that person or entity and (ii) that message does not advertise or promote a product, service, or Internet Web site of the person or entity forwarding the message; or

(4) The address to which that message is sent or directed does not include a reference to a domain name that has been posted on the FCC's wireless domain names list for a period of at least 30 days before that message was initiated, provided that the person or entity does not knowingly initiate a mobile service commercial message.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4344 Filed 3–4–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–415; MB Docket No. 04–357, RM–11076; MB Docket No. 04–358, RM–11071; MB Docket No. 04–359, RM–11072; MB Docket No. 04–360, RM–11073]

Radio Broadcasting Services; Adams, MA; Ashtabula, OH; Crested Butte, CO; Lawrence Park, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants four new FM broadcast allotments in Adams, Massachusetts; Ashtabula, Ohio; Crested Butte, Colorado; Lawrence Park, Pennsylvania. The Audio Division, Media Bureau, at the request of Dana Puopolo, allots Channel 255A at Adams, Massachusetts, as the community's local aural transmission service. That allotment also requires a site change for Channel 255A at Rosendale, NY. Channel 255A is allotted to Adams in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 kilometers (1 mile) west of the community. The reference coordinates for Channel 255A at Adams are 42–37–12 NL and 73–08–12 WL. The reference coordinates for Channel 255A at Rosendale are 41–54–47 NL and 74–09–00 WL. Since Adams is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been received. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Effective April 4, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

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 Nos. 04–357, 04–358, 04–359, 04–360, adopted February 16, 2005 and released February 18, 2005. The full text of this Commission document is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth 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 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 5 U.S.C. 801(a)(1)(A).

The Audio Division at the request of Dana Puopolo, allots Channel 241A at Ashtabula, Ohio, as the community's fourth local aural transmission service. Channel 241A is allotted to Ashtabula in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (.09 miles) northwest of the community. The reference coordinates for Channel 241A at Ashtabula are 41–52–38 NL and 80–47–49 WL. Since Ashtabula is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been received as a specially negotiated short-spaced allotment to protect Station CFPL–FM, Channel 240C1, London, Ontario, Canada.

The Audio Division at the request of Linda Davidson allots Channel 246C3 at Crested Butte, Colorado, as the community's second local aural transmission service. Channel 246C3 is allotted to Crested Butte in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) east of the community. The reference coordinates for Channel 246C3 at Crested Butte are 38–50–42 NL and 106–54–00 WL.

The Audio Division at the request of Dana Puopolo allots Channel 224A at Lawrence Park, Pennsylvania, as the community's first local aural transmission service. Channel 224A is allotted to Lawrence Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) southwest of the community. The reference coordinates for Channel 224A at Lawrence Park are 42–06–00 NL and 80–07–48 WL. Lawrence Park is located within 320 kilometers (200 miles) of the U.S. Canadian border. Thus, concurrence of the Canadian government has been received for this allotment. It will be a specially negotiated short-spaced allotment limited to 225 watts ERP and 100 meters HAAT to protect Station CJBX–FM, Channel 224B, London, Ontario.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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]

■ 1. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Crested Butte, Channel 246C3.

■ 2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Adams, Channel 224A.

■ 3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Channel 241A at Ashtabula.

■ 4. Section 73.202(b), the Table of FM allotments under Pennsylvania, is amended by adding Lawrence Park, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–4345 Filed 3–4–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–414; MB Docket No. 02–72, RM–10399; RM–10639; and RM–10640]

Radio Broadcasting Services; East Harwich, Nantucket, and South Chatham, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Brewster Broadcasting Co. in its counterproposal to a petition for rulemaking by John Garabedian, allots Channel 254A at East Harwich, Massachusetts, as the community's first local FM service. Channel 254A can be allotted to East Harwich, Massachusetts, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 km (3.5 miles) southeast of East Harwich. The coordinates for Channel 254A at East Harwich, Massachusetts, are 41–40–33 North Latitude and 69–58–03 West Longitude.

DATES: Effective April 4, 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. 02–72, adopted February 16, 2005, and released February 18, 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 Massachusetts, is amended by adding East Harwich, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–4346 Filed 3–4–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 041203341–5047–02; I.D. 072304B]

RIN 0648–AR86

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls, and Catch-and-Release Provision

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

ACTION: Final rule.

SUMMARY: NMFS announces the final initial 2004 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories, to set General category effort controls, and to establish a catch-and-release provision for recreational and commercial BFT handgear vessels during a respective quota category closure. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule is effective from April 4, 2005.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the 1999 Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan (1999 FMP) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division website at *www.nmfs.noaa.gov/sfa/hmspg.html* or at the Federal e-Rulemaking Portal: *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

Background information about the need for the final initial BFT quota specifications, General category effort controls, and establishment of a catch-and-release provision was provided in the preamble to the proposed rule (69 FR 71771, December 10, 2004), and is not repeated here. Therefore, by this final rule, NMFS announces the final

initial BFT quota specifications, announces the applicable General category effort controls, and implements a catch-and-release provision for recreational and commercial BFT handgear vessels during a respective quota category closure.

Changes From Proposed Rule

Angling Category Landings

Two corrections to BFT recreational landing estimates contained in the proposed rule have been incorporated in this final rule. The first correction adjusts the 2002 BFT recreational landings estimate from 651.1 mt, to 641.6 mt; a difference of minus 9.5 mt. Also, the 2003 BFT recreational landings estimate of 411.7 mt has been corrected to 410.7 mt, a difference of minus 1.0 mt. NMFS made these corrections per a review of landings estimates made in the 2002–2003 U.S. Recreational Fishery Landings Estimates for White Marlin, Blue Marlin, and Bluefin Tuna Report, available at www.nmfs.noaa.gov/sfa/hms/.

Restricted Fishing Days

For the 2004 fishing year, NMFS proposed a series of blocks of restricted fishing days (RFDs) to extend the General category for as long as possible through the October through January time-period. The coastwide General category closed on January 4, 2005 (70 FR 302, January 4, 2005) and therefore the proposed RFDs were not needed.

2004 Final Initial Quota Specifications

In accordance with the 2002 ICCAT Recommendation, the ICCAT Recommendation regarding the dead discard allowance, the 1999 FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS establishes final initial quota specifications for the 2004 fishing year as follows: General category — 659.0 mt; Harpoon category — 81.4 mt; Purse Seine category — 389.4 mt; Angling category — 76.5 mt; Longline category — 171.2 mt; and Trap category — 2.3 mt. Additionally, 36.6 mt will be allocated to the Reserve category for inseason allocations, including providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category. The overall final initial BFT quota for the 2004 fishing year equals 1416.4 mt.

Based on the above final initial specifications, the Angling category quota of 76.5 mt will be further subdivided as follows: School BFT — 24.6 mt, with 9.5 mt to the northern area (north of 39° 18′ N. latitude), 10.7 mt to the southern area (south of 39° 18′ N. latitude), plus 4.4 mt held in reserve; large school/small medium BFT — 49.7 mt, with 23.5 mt to the northern area and 26.2 mt to the southern area; and large medium/giant BFT — 2.2 mt, with 0.7 mt to the northern area and 1.5 mt to the southern area.

The 2002 ICCAT Recommendation included an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the vicinity of the management area boundary, defined as the Northeast Distant statistical area (NED) (68 FR 56783, October 2, 2003). This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. Thus, the Longline category quota of 171.2 mt will be subdivided as follows: 58.2 mt to longline vessels landing BFT north of 31° N. latitude; 49.2 mt to longline vessels land BFT harvested from the NED; and 63.8 mt to longline vessels landing BFT south of 31° N. latitude.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the 1999 FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The 1999 FMP divides the annual General category quota into three time-period subquotas. Each time-period and percentage of General category quota allocated to that time- period are as follows: June-August, 60 percent; September, 30 percent; and for October-January, 10 percent. These percentages are applied to the final initial 2004 coastwide General category quota of 659.0 mt, minus 10.0 mt reserved for the New York Bight fishery. Therefore, of the available 649.0 mt coastwide quota, 389.4 mt are available in the period beginning June 1 and ending August 31; 194.7 mt are available in the period beginning September 1 and ending September 30; and 64.9 mt are available in the period beginning October 1 and ending January 31, 2005.

2004 Fishing Year Inseason Adjustment Summary

During the 2004 fishing year, NMFS conducted two inseason quota transfers using the authority under the implementing regulations at 50 CFR § 635.28(a)(8). For each inseason transfer, NMFS determined it was warranted based on the consideration of the criteria governing quota transfers between categories, the 2004 proposed BFT specifications including carryover adjustments from prior years and an assessment of the commercial and recreational landings data to date. The first inseason adjustment transferred 223.1 mt of General category quota to the Angling category and transferred a combined quota of 161.9 mt from the General, Harpoon, and Incidental Longline categories to the Reserve category (69 FR 71732, December 10, 2004). The second inseason adjustment transferred 100 mt from the Purse seine category to the Reserve category (70 FR 302, January 4, 2005). The result of these inseason transfers is an adjustment of any remaining available quota from these final initial specifications.

Catch and Release Provision

NMFS implements a rule change to allow vessels participating in the BFT recreational and commercial handgear fisheries to catch and release BFT after their respective quota categories have closed. This provision addresses concerns that requiring BFT to be tagged, once a closure has taken place, may lead to unnecessary post-release mortality associated with anglers who are inexperienced with proper tagging techniques and may improperly place the tag on the BFT, unintentionally killing or injuring the fish. This provision allows vessels owners/operators to tag-and-release BFT after a respective quota category closure has taken place, but would not require them to do so as part of a catch-and-release program.

Comments and Responses

Comment 1: One commentor did not specifically address the substantive aspects of the proposed rule, but rather indicated general support for establishing marine sanctuaries, adopting the Pew Foundation reports' findings on overfishing, and concern over the fact that NMFS may be relying on biased information for conducting stock assessments.

Response: This final rule is designed to provide for the fair and efficient harvest of the BFT quota that is allocated to the United States by the

International Commission for the Conservation of Atlantic Tunas (ICCAT) and is consistent with the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and management Act. The final quota specifications divide the proportion of the overall western Atlantic bluefin tuna quota allotted to the United States among domestic categories. Time-period subquotas are a means of controlling fishing effort and are also included in this action. These measures are consistent with the BFT rebuilding program established in the 1999 FMP and implemented to achieve domestic management objectives. NMFS does use commercial logbook data to conduct stock assessments, however, fishery-independent data, intercept surveys, and results from scientific surveys are also employed to provide a more accurate representation of a stocks' population dynamics.

Comment 2: NMFS received a comment related to both this action and an ongoing amendment to the 1999 FMP that is currently in the pre-draft stage. The commentor believes that the Agency should allocate 150 metric tons to the December-January General category time-period subquota. This allocation would ensure extended fishing opportunities for General category fishermen in the south Atlantic.

Response: NMFS is considering several alternatives as part of the amendment to the 1999 FMP to address BFT management in general and specifically sub-quota allocation for BFT in the General category. It is a goal for NMFS and the 1999 FMP to ensure that fishing and economic opportunities are sustained for participants. The process for amending the 1999 FMP includes public comment, analyses of a full range of alternatives, and draft and final Environmental Impact Statements.

Comment 3: A commentor supported the elimination of the tag-and-release requirement for recreational fishermen after a season has closed.

Response: This action replaces the tag-and-release provision with a catch-and-release provision in order to reduce post-release mortality due to tagging by inexperienced anglers and increase fishing opportunities for recreational fishermen after a season has closed.

Comment 4: A commentor indicated support for the RFDs as proposed.

Response: NMFS implements RFDs as an effective means of slowing the pace of the winter fishery and extending available quota over a longer period of time. The coastwide General category BFT fishery closed on January 4, 2005 (70 FR 302, January 4, 2005) and therefore the proposed RFDs were not needed.

Comment 5: A commentor expressed concern at the Agency's inability to capture and assess previous years' landings data for BFT in an accurate and efficient manner, compromising timely season openings and allocations. Specifically, the commentor stated that there are discrepancies in the methods used by NMFS' contracted field agents under the Large Pelagics Survey (LPS) when converting fish lengths to estimated fish weights. The commentor stated that these discrepancies resulted in the pre-mature closure of the November 2003 Angling category fishery which had significant economic consequences on state participants. The commentor suggested initiating a coast-wide tail tag monitoring program to address this issue.

Response: This past year , NMFS reviewed the 2002 estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported to ICCAT. NMFS reviewed the data collection and estimation methods that were used to verify that the reported estimates were the most accurate that could be made with available 2002 data. NMFS also considered methods to be used for estimation of 2003 recreational fishery landings, as well as using those methods to produce landings estimates from the available 2003 recreational fishery data. A report summarizing findings of this review was made available on December 9, 2004. This report can be obtained at the HMS Management Division website located at *www.nmfs.noaa.gov/sfa/hms*. Based on the findings of this report, and consultations with the LPS contractor, methods of fish measurement and length/weight conversion will be further scrutinized. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under discussion among coastal states and within NMFS and focus on issues regarding specifics of logistics and implementation as well as funding sources.

Classification

These final initial specifications, general category effort controls, and the catch-and-release provision are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the Final Regulatory Flexibility Analysis (FRFA) is provided below.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. For the quota allocation alternatives, NMFS has estimated the average impact of the alternatives on individual categories and the vessels within those categories. As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt. This increase, in comparison to pre–2002 levels, includes 77.6 mt to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed pelagic longline fisheries in the NED. In 2003, preliminary annual gross revenues from the commercial BFT fishery were approximately $11.5 million. There are approximately 10,914 vessels that are permitted to land and sell BFT under four BFT quota categories. The four quota categories and their preliminary 2003 gross revenues are General ($7,476,461), Harpoon ($772,810), Purse seine ($2,546,236), and Incidental Longline ($635,498). Note that all dollars have been converted to 1996 dollars using the Consumer Price Index Conversion Factors for comparison purposes. The analysis for the FRFA assumes that all category vessels have similar catch and gross revenues. While this assumption may not be entirely valid, the analyses are sufficient to show the relative impact of the various preferred alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, three alternatives were considered: the No Action alternative, the final action that will allocate the ICCAT-recommended quota to domestic categories in accordance with the 2002 ICCAT recommendation and the 1999 FMP, and a slight variation of the final action, that also included a 25 mt limit on the amount of quota that can accumulate from year-to-year within the pelagic longline quota set-aside in the NED.

The no action alternative was rejected because it was not consistent with the purpose and need for this action, ATCA, and the 1999 FMP. It would maintain U.S. BFT quota levels at a scale and distribution similar to the 2002 fishing

year and would deny fishermen additional fishing opportunities as recommended by the ICCAT, an estimated $1,000,000 in potential, additional gross revenues. The 2002 ICCAT quota recommendation specified a 1,489.6 mt total quota for the United States, a 102.6 mt increase from pre–2002 quota levels. Under ATCA, the United States is obligated to implement ICCAT-approved recommendations. The final action will increase the overall quota by 77.6 mt resulting in an approximate increase in gross revenues of $750,000, and will also create a set-aside quota of 25 mt to account for incidental harvest of BFT in the NED by pelagic longline vessels, resulting in a potential increase in gross revenues of $250,000. Unharvested quota from this set aside will be allowed to roll from one fishing year to the next. The final action is expected to have positive economic impacts for fishermen, because of the modest increase in quota. Under the slight variation of the final action, the annual specification process would limit the NED set-aside to 25 mt and would not take into account any unharvested set-aside quota from the prior fishing year. Unharvested quota would not be rolled over from the previous fishing year, nor would it be transferred or allocated to other domestic fishing categories. This alternative was rejected because it is not expected to have the same positive economic impacts as the final action, however it would allow for overall positive economic impacts for fishermen due to the increase in gross revenues associate with the 77.6 mt quota increase.

For the General category effort controls, two alternatives were considered: the alternative to designate RFDs according to a schedule published in the initial BFT specifications; and the selected no action alternative, which does not publish RFDs with the initial specifications, but would implement them during the season as needed. No other alternatives were considered as they would not have met the purpose and need for this issue. The no action alternative was selected due to the coastwide General category BFT fishery closing for the season on January 4, 2005 (70 FR 302). The economic impacts associated with this selected alternative would be considered neutral as the General category BFT fishery harvested, almost in entirety, the available quota for the 2004 fishing year. The economic impacts associated with the rejected alternative would also be considered neutral, as the final initial specifications would have published after this fishery had closed.

For the catch-and-release provision, NMFS considered three alternatives: no action alternative (maintain the tag-and-release requirement once a handgear quota category has been closed), an alternative to disallow all fishing for BFT once a handgear quota category has been closed, and the final action which will allow vessels to catch-and-release BFT once a handgear quota category has been closed.

Although NMFS understands that recreational HMS fisheries have a large influence on the economies of coastal communities, even when vessels are engaged in tag-and-release or catch-and-release fishing, NMFS has little current information on the costs and expenditures of anglers or the businesses that rely on them. Based on conversations with representatives of the handgear sectors of the BFT fishery, NMFS has rejected the no action alternative because it would have slightly negative economic impacts. This assessment is attributed to vessel owner/operators, who are not comfortable tagging BFT, or those owner/operators who are unable to obtain a tagging kit in a timely fashion, not taking trips to pursue BFT. The second alternative was rejected because it would have even greater negative economic impacts by prohibiting vessels from taking trips targeting BFT after a quota is attained. The final action will have positive economic impacts on those associated with the BFT handgear fishery. This final action, will positively impact numerous economic aspects of the BFT handgear fishery due to the willingness of more vessel owner/operators to actively take trips targeting BFT after a closure has taken place. This final action will also allow for the tagging of BFT, but would not require owner/operators to do so.

None of the final actions in this document would result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This final rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this final rule, are available from NMFS via the Federal e-Rulemaking Portal (see ADDRESSES).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A BiOp, issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives required by this BiOp. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs and other measures in the 2004 BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further

reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as necessary, to implement any management measures that are required under the 2004 BiOp. The majority of the measures that will be implemented by this current rule are not expected to have adverse impacts. However, the 2002 ICCAT recommendation increased the BFT quota which may result in a slight increase in effort which could potentially increase the number of protected species interactions. Due to current restrictions on the BFT fishery and more specifically the pelagic longline fishery, NMFS does not expect this slight increase in effort to alter current fishing patterns.

The area in which this final action is planned has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. It is not anticipated that this final action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the list of actions in this final rule are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). On December 10, 2004, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of February 11, 2005, NMFS has received six responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 1, 2005.

Rebecca J. Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct catch-and-release or tag-and-release fishing for BFT under § 635.26.

* * * * *

■ 3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) * * *

(1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

* * * * *

[FR Doc. 05–4378 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 43
Monday, March 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150 AH–54

Fire Protection Program—Post-Fire Operator Manual Actions Draft Regulatory Guide: Issuance, Availability

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule and Issuance of Draft Regulatory Guide.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its fire protection regulations for nuclear power facilities operating prior to January 1, 1979. The amendment would allow nuclear power plant licensees to use manual actions by plant operators as an alternative method to achieve hot shutdown conditions in the event of fires in certain plant areas, provided that the actions are evaluated against specified criteria and determined to be acceptable and that fire detectors and an automatic fire suppression system are provided in the fire area. The Commission believes that the proposed action would provide realistically conservative regulatory acceptance criteria for operator manual actions to achieve and maintain hot shutdown condition.

The NRC is also proposing and requesting comments on a draft regulatory guide to support this proposed rulemaking. The NRC has developed the Regulatory Guide Series to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' is temporarily identified by its task number, DG–1136, which should be mentioned in all related correspondence. This proposed regulatory guide offers guidance for NRC licensees and applicants to use in implementing the feasibility and reliability criteria that the staff developed for post-fire operator manual actions.

DATES: Submit comments on the proposed rule and the draft regulatory guide by May 23, 2005. Submit comments specific to the information collection aspects of this rule by April 6, 2005. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments on the proposed rule by any one of the following methods. Please include the following number RIN 3150 AH–54 and/or DG–1136 in the subject line of your comments. Comments on the rulemakings or the draft regulatory guide submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format), if your web browser supports that function.

Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal Rulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Electronic copies of Draft Regulatory Guide DG–1136 are available in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML050350359. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS. 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 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*. Electronic copies of Draft Regulatory Guide DG–1136 are also available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

FOR FURTHER INFORMATION CONTACT: David T. Diec, 301–415–2834, *dtd@nrc.gov* or Alexander Klein, 301–415–3477, *ark1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Rulemaking Initiation
III. Proposed Action
A. Operator Manual Actions Alternative
B. Addition of Paragraph III.P, Operator Manual Actions Acceptance Criteria
C. Response to Stakeholder Comments on Operator Manual Action Acceptance Criteria
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I. Background

Section 50.48, Fire protection, requires each operating power plant to have a fire protection plan that satisfies Criterion 3 of Appendix A to 10 CFR part 50. Criterion 3 requires structures, systems, and components important to safety to be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions. The specific fire protection requirements for safe shutdown capability of a plant are further discussed in paragraph G of Section III of Appendix R to 10 CFR part 50. The more specific § 50.48 and Appendix R requirements were added following a significant fire that occurred in 1975 at the Browns Ferry Nuclear Plant. The fire damaged control, instrumentation, and power cables for redundant trains of equipment necessary for safe shutdown.

In response to the fire, an NRC investigation found that the independence of redundant equipment at Browns Ferry was negated by a lack of adequate separation between cables for redundant trains of safety equipment. The investigators subsequently recommended that a suitable combination of electrical isolation, physical distance, fire barriers, and sprinkler systems should be used to maintain the independence of redundant safety equipment. In response to these recommendations, the NRC interacted with stakeholders for several years to identify and implement necessary plant fire protection improvements. In 1980, NRC promulgated § 50.48 to establish fire protection requirements and Appendix R to 10 CFR part 50 for certain generic fire protection program issues, including paragraph III.G, fire protection of safe shutdown capability. The requirements for separation of cables and equipment associated with redundant hot shutdown trains were promulgated in paragraph III.G.2.

Paragraph III.G.2 of Appendix R requires that cables and equipment of redundant trains of safety systems in the same fire area be separated by either:

a. A 3-hour fire barrier, or

b. A horizontal distance of more than 20 feet with no intervening combustibles in conjunction with fire detectors and an automatic fire suppression system, or

c. A 1-hour fire barrier combined with fire detectors and an automatic fire suppression system.

Appendix R applies to only those licensees who received operating licenses before January 1, 1979. Plants licensed after January 1, 1979, are not required to meet Appendix R. These plants were licensed to meet Branch Technical Position CMEB 9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' that contains criteria similar to the Appendix R requirements. Specific licensing basis information for these plants is usually contained in license conditions issued at time of licensing.

Because the rule was to apply to facilities which were already built, the NRC knew that compliance with various parts of Appendix R might be difficult at some facilities. Accordingly, the NRC included a provision which allowed licensees to submit alternative acceptable methods for protecting redundant equipment for NRC review and approval through an exemption process. During implementation of the Appendix R requirements, the NRC reviewed and approved a large number of exemptions for 60 licensees who proposed alternative acceptable methods of compliance in various areas, including numerous exemptions from paragraph III.G.2.

In the early 1990s, generic problems arose with Thermolag [1] fire barriers, which many licensees were using to comply with paragraph III.G.2 of Appendix R. Licensees were ultimately required to replace Thermolag material with other fire barriers. Several years later, fire protection inspectors began to notice that many licensees had not upgraded or replaced Thermolag fire barrier material (or had not otherwise provided the required separation distance between redundant safety trains) used to satisfy the paragraph III.G.2 criteria. Some licensees compensated by relying on operator manual actions [2] which were not reviewed and approved by the NRC through the § 50.12 exemption process. Currently, operator manual actions are not an alternative specified in paragraph III.G.2 of Appendix R. However, such actions may be an acceptable means of achieving hot shutdown in the event of a fire under certain conditions.

In 2002, the NRC met with nuclear power plant licensees and informed them that the use of unapproved manual actions was not in compliance with paragraph III.G.2. During a meeting on June 20, 2002, the Nuclear Energy Institute representative stated that there was widespread use of operator manual actions throughout the industry based on the industry's understanding of past practice and existing NRC guidance. The industry representative also stated that licensees' use of unapproved manual actions had become prevalent even before the concerns arose with Thermolag material. Subsequent to the public meeting, the NRC developed criteria for inspectors to use in assessing the safety significance of violations resulting from licensee use of unapproved operator manual actions. The criteria were based on past practice and experience by NRC inspectors when reviewing operator manual actions used to comply with Appendix R, paragraph III.G.3, on alternate reactor shutdown capability. Licensees were familiar with these criteria through their interactions with the NRC staff during the implementation of the NRC inspection process. These criteria were issued in the revision to Inspection Procedure 71111.05 in March 2003. While unapproved operator manual actions are still violations, those actions that meet the interim criteria are viewed to have low or no safety significance.

II. Rulemaking Initiation

Instead of continuing the current practice of requiring all noncompliant licensees to submit individual exemption requests for staff review to determine if their operator manual actions are acceptable, the Commission believes that amending Appendix R to 10 CFR part 50 would be the most orderly and efficient way to provide an option for licensees to utilize acceptable operator manual actions in lieu of the separation or barrier requirements in paragraph III.G.2. In this way the NRC

[1] Thermolag is a brand-name for a particular type of material used to construct fire barriers typically for protecting electrical conduits and cable trays. In the early 1990's, issues arose regarding the testing and qualification process used for this material. It was determined that barriers made of this material would not provide protection for the required periods of time.

[2] Operator manual actions are an integrated set of actions needed to ensure that a redundant train of systems necessary to achieve and maintain hot shutdown conditions located within the same fire area outside the primary containment is free of fire damage.

would codify conservative acceptance criteria for licensees to use in evaluating operator manual actions to ensure that the actions were both feasible and reliable. These criteria would maintain safety by ensuring that licensees perform thorough evaluations of the operator manual actions comparable to evaluations a licensee would provide to NRC for review and approval of an exemption request.

The NRC staff developed a rulemaking plan (SECY–03–0100) and the Commission approved the staff plan on September 12, 2003. The rule change would revise 10 CFR part 50, Appendix R, paragraph III.G.2 to allow licensees to implement acceptable operator manual actions after documenting that the actions met the regulatory acceptance criteria. Through the established Reactor Oversight Process (ROP), the NRC will continue to inspect licensees' methodologies for achieving and maintaining hot shutdown conditions in accordance with the requirements set forth in paragraph III.G.2 of Appendix R to 10 CFR part 50. The NRC fire protection inspectors will verify that the licensees' operator manual actions met the NRC acceptance criteria and will evaluate the licensees' analyses, procedures and training, implementation, and demonstration of operator manual actions to ensure the licensees have adequately demonstrated the feasibility and reliability of manual actions.

III. Proposed Action

The Commission proposes to allow the use of operator manual actions coincident with fire detectors and an automatic fire suppression system as an additional alternative method for compliance with paragraphs III.G.2(a), (b) or (c) of Appendix R.[3] The Commission has determined that implementing any one of the alternatives in paragraph III.G.2 will provide reasonable assurance that at least one method for achieving and maintaining the hot shutdown condition will remain available during and after a postulated fire anywhere in the plant. The Commission proposes to add a new paragraph G.2.c–1 and a paragraph P to section III of Appendix R to 10 CFR part 50. The new paragraph G.2.c–1 would establish operator manual actions, in conjunction with fire detectors and an automatic fire suppression system, as a fourth compliance option with paragraphs III.G.2(a), (b) or (c), provided that the operator manual actions satisfy the acceptance criteria in the new paragraph P. The new paragraph P would define operator manual actions and set forth the required acceptance criteria which must be met before a licensee could use operator manual actions outside the containment to comply with paragraph III.G.2 of Appendix R. Compliance with these acceptance criteria is necessary to provide reasonable assurance of the feasibility and the reliability of the operator manual actions.

A. Operator Manual Actions Alternative

The Commission proposes to add a new paragraph c–1 to paragraph III.G.2 of 10 CFR part 50 to codify the use of operator manual actions in conjunction with fire detectors and an automatic fire suppression system, as an additional alternative compliance method. Implementing any of the alternatives in paragraph III.G.2 will provide reasonable assurance that at least one method for achieving and maintaining the reactor in a hot shutdown condition will remain available during and after a postulated fire. The basis for this determination is provided below.

The Commission's fire protection requirements constitute a defense-in-depth approach to protect safe shutdown functions. The overall objectives of the NRC's fire protection regulations are to minimize the potential for fires and explosions; to rapidly detect, control, and extinguish fires that do occur; and to ensure that the fires will not prevent the accomplishment of necessary safe shutdown functions and will not significantly increase the risk of radioactive releases to the environment. The NRC has concluded if these objectives are met, there is reasonable assurance that a licensed facility is providing adequate protection of public health and safety. These objectives are met by a set of NRC requirements for control of combustible materials and ignition sources, fire detection and suppression systems, fire brigade procedures and training, and physical separation of cables and equipment of redundant trains of safe shutdown equipment.

The physical separation requirements in paragraph III.G.2 of Appendix R are one component of the NRC's overall fire protection objectives. In paragraph III.G.2, the NRC specified three different methods for providing separation of cables and equipment of redundant trains of equipment located in the same fire area. These three options for compliance with paragraph III.G.2 offer sufficient but varying levels of protection. In general, the 3-hour passive fire barrier is judged to offer more protection than either of the other options (*i.e.*, the 1-hour passive fire barrier or 20 feet of horizontal separation with no intervening combustibles, in combination with fire detectors and an automatic fire suppression system installed in the fire area). The NRC published a final rule in the **Federal Register** on November 19, 1980 (45 FR 76602) stating that redundant trains of safe shutdown systems are best protected by 3-hour passive fire barriers that provide ample time for manual fire suppression activities to control any fire. The proposed operator manual action offers protection comparable to the latter two options, both of which require the additional layer of defense-in-depth protection provided by having fire detection and automatic suppression capability. The basis for automatic suppression capability in III.G.2 is found in the final rule published on November 19, 1980 (45 FR 76602), which stated, ''The use of 1-hour barrier in conjunction with automatic fire suppression and detection capability * * * is based on the following considerations. Automatic suppression is required to ensure prompt, effective application of a suppressant to a fire that could endanger safe shutdown capability.'' The prompt, effective application of a suppressant to a fire also applies to III.G.2.b with 20 feet of horizontal separation with no intervening combustibles. Accordingly, the NRC proposes to allow use of operator manual actions only in conjunction with fire detectors and an automatic fire suppression system.

In issuing the current Appendix R, paragraph III.G.2, requirements on physical separation of safe shutdown systems, the Commission recognized that strict compliance with the III.G.2 criteria might be difficult for certain licensees at existing facilities. At that time, the Commission was aware that other fire protection alternatives might exist that could provide adequate fire protection at these facilities. For this reason, the Commission included an

[3] The requirements in Appendix R are applicable only to licensees who received operating licenses before January 1, 1979. Post-January 1, 1979, licensees were licensed to meet GDC–3, § 50.48(a), and Branch Technical Position CMEB 9.5–1, which contain criteria that are similar to the Appendix R requirements. Post-January 1, 1979 licensees who use operator manual actions without NRC approval may or may not be in compliance with applicable fire protection requirements. Compliance depends on the specific licensing commitments (usually specified in license conditions for these licensees), the change control process, and how the change was justified and analyzed to demonstrate that the operator manual actions are feasible and reliable and thus do not adversely affect the ability to achieve or maintain safe shutdown.

exemption provision in § 50.48 [4] to allow licensees to propose alternative fire protection methods to the Commission for review and approval. Under the exemption process, the Commission has used its fire protection engineering experience and judgment to review and grant (or in some cases deny) exemptions to licensees who, because of plant physical limitations, sought to implement operator manual actions in lieu of complying with the paragraph III.G.2 separation requirements.

The NRC recognized in the SECY–03–0100 rulemaking plan that ''[r]eplacing a passive, rated, fire barrier * * * with human performance activities can increase risk. For some simple operator manual actions, the risk increase associated with human performance may be minimal. For other actions, unless the operator manual actions are feasible, the risk increase could be significant * * * However, if the operator manual actions are feasible, the overall risk increase is minimal.''

On the basis of inspection experience, the NRC has concluded that certain manual actions can be accomplished and provide an adequate level of safety to satisfy the underlying purpose of the fire protection rule for the areas set forth in paragraph III.G.2. In addition, the NRC has reviewed and granted certain exemption requests for the use of manual actions in lieu of the separation criteria of paragraph III.G.2. This experience demonstrates that properly analyzed and implemented manual actions provide an adequate level of assurance that a nuclear power plant could achieve and maintain hot shutdown conditions.

Due to misunderstanding of acceptable past practice and existing fire protection guidance that led licensees to implement unapproved operator manual actions, the NRC may be faced with a large number of operator manual action exemption requests from licensees. To provide a more efficient and effective process and to ensure more uniform and consistent regulatory treatment of these cases, the NRC is proposing to codify conservative, state-of-the-art acceptance criteria for licensees to use in evaluating operator manual actions to ensure that they are both feasible and reliable. The NRC believes that codifying this alternative in the rule will be more efficient than using the exemption process, and will provide for enhanced safety by allowing resources to be focused on safety rather than administrative compliance.

Something that is ''feasible'' is ''capable of being accomplished or brought about; possible.'' Something that is ''reliable'' will ''yield the same or compatible results in different experiments or statistical trials; dependably repeatable.'' To credit operator manual actions under paragraph III.G.2 for outside containment, the licensee must prove to the satisfaction of the NRC not only that the actions can be successfully accomplished, but also that they can be accomplished repeatedly by all personnel who are required to perform the actions. Together, proof that the operator manual actions are both feasible and reliable provides the level of reasonable assurance necessary for credited operator manual actions to be in compliance with paragraph III.G.2.

If shown to be feasible and reliable, operator manual actions are likely to be successfully achieved, and any potential increases in risk to the public due to their use will be minimal. Requiring the operator manual actions to meet conservative acceptance criteria provides the NRC with reasonable assurance that such operator manual actions can be accomplished to safely shut down the plant in the event of a fire. These criteria maintain safety by ensuring that licensees perform thorough evaluations of the required operator manual actions and pre-plan equipment needs. NRC fire protection inspectors will verify that licensees' documented operator manual actions meet the NRC acceptance criteria through the existing triennial inspection process. The use of operator manual actions does not diminish the other defense-in-depth objectives of the NRC fire protection program (*i.e.*, the requirements that minimize the potential for fires and explosions and those which provide for rapid controlling and extinguishing of fires that do occur). To support the objective for rapidly controlling and extinguishing fires, the NRC is requiring fire detectors and an automatic fire suppression system as part of the new operator manual actions option. Accordingly, the NRC has determined that the proposed rulemaking provides reasonable assurance that the public health and safety are protected, consistent with the assurance provided by compliance with the current three options in paragraphs III.G.2(a), (b) or (c).

B. Addition of Paragraph III.P, Operator Manual Actions Acceptance Criteria

The proposed paragraph III.P specifies the required acceptance criteria which must be met before a licensee may utilize operator manual actions to comply with paragraph III.G.2 of Appendix R. A detailed discussion of each criterion is provided further in this Statement of Consideration. These criteria are as follows:

III.P Operator Manual Actions

1. For purposes of this section, operator manual actions means the integrated set of actions needed to ensure that a redundant train of systems necessary to achieve and maintain hot shutdown conditions located within the same area outside the primary containment is free of fire damage.

2. A licensee relying on operator manual actions must meet all of the following acceptance criteria:

(a) *Analysis.* The licensee shall prepare an analysis for each operator manual action which demonstrates its feasibility and reliability.

(1) The analysis must contain a postulated fire timeline showing that there is sufficient time to travel to action locations and perform actions required to achieve and maintain the plant in a hot shutdown condition under the environmental conditions expected to be encountered without jeopardizing the health and safety of the operator performing the manual actions. The fire timeline shall extend from the time of initial fire detection until the time when the ability to achieve and maintain hot shutdown is reached, and shall include a time margin that reasonably accounts for all important variables, including (i) differences between the analyzed and actual conditions and (ii) human performance uncertainties that may be encountered.

(2) The analysis must address the functionality of equipment or cables that could be adversely affected by the fire or its effects but still used to achieve and maintain hot shutdown.

(3) The analysis must identify all equipment required to accomplish the operator manual action within the postulated timeline, including (but not limited to) (i) all indications necessary to identify the need for the operator manual actions, enable their performance, and verify their successful accomplishment, and (ii) any necessary communications, portable, and life support equipment.

(b) *Procedures and training.* Plant procedures must include each operator manual action required to achieve and maintain hot shutdown. Each operator

[4] The exemption provision no longer exists in 10 CFR 50.48. It has been subsumed by the exemption provisions in 10 CFR 50.12, which apply to all sections of 10 CFR part 50.

must be appropriately trained on those procedures.

(c) *Implementation.* The licensee shall ensure that all systems and equipment needed to accomplish each operator manual action are available and readily accessible consistent with the analysis required by paragraph 2(a). The number of operating shift personnel required to perform the operator manual actions shall be on site at all times.

(d) *Demonstration.* Periodically, the licensee shall conduct demonstrations using an established crew of operators to demonstrate that operator manual actions required to achieve and maintain the plant in a hot shutdown condition can be accomplished consistent with the analysis in paragraph 2(a) of this section. The licensee may not rely upon any operator manual action until it has been demonstrated to be consistent with the analysis. The licensee shall take prompt corrective action if any subsequent periodic demonstration indicates that the operator manual actions can no longer be accomplished consistent with the analysis.

These acceptance criteria for operator manual actions are intended to assure the safe shutdown goals and objectives for operating reactors as required in 10 CFR 50.48. The primary objective for safe shutdown is to maintain fuel integrity (*i.e.*, fuel design limits are not exceeded). For alternative or dedicated shutdown capability, the reactor coolant system process variables should be maintained within those predicted for a loss of normal ac power and fission product boundary integrity should not be affected.

The applications of these acceptance criteria are as follows. First, the criteria are the means by which the NRC will establish standards that provide a reasonable level of assurance that operator manual actions will be satisfactorily and reliably performed to bring the plant to a hot shutdown condition, thus protecting public health and safety. Second, a standard set of acceptance criteria will permit both the licensees and NRC to establish consistency as to what operator manual actions will be allowed. Third, the criteria will provide the parameters which both the licensees and NRC will use to conduct evaluations and inspections in a thorough manner. The supporting basis for each criterion is discussed in detail below.

The acceptance criteria in the proposed rule are structured to ensure both feasibility and reliability of the operator manual actions. To credit operator manual actions, the licensee must prove not only that the actions can be successfully accomplished (are feasible), but also that they can be done so repeatedly (are reliable). Central to the approach is the preparation of an analysis that determines what actions must be taken in order to reach a hot shutdown condition. This analysis would also identify the time available (timeline) for successful performance of such actions. A demonstration of the accomplished operator manual actions within the established timeline verifies the feasibility of such actions. In order to also achieve reliability of the actions, the Commission is proposing a criterion for a time margin needed to complete the actions because of potential variations in fire characteristics, plant conditions, and human performance that the demonstration cannot adequately address. This concept is further described in the sections below.

Timeline Analysis

The Commission will require that a licensee perform an analysis to determine the feasibility and reliability of operator manual actions. As part of the analysis, there shall be a fire timeline, which extends from the initial fire detection to the achievement of maintainable hot shutdown conditions, to define the time boundaries of the analysis for the fire scenario in which the operator manual actions will be performed. The analysis must identify all actions that must be completed, the equipment needed, the number of people needed, the communications equipment required, and the time available to perform the actions before unsafe plant conditions occur (*i.e.*, before exceeding safe shutdown goals and objectives). The proposed rule has more specific requirements on each of these aspects that are discussed in subsequent sections of this notice. The Commission will require a licensee to show that a sufficient amount of extra time would be available for the required operator manual actions and that the process for determining the time available for such actions adequately addressed the potential variations in fire characteristics, plant conditions, and human performance. This concept is referred to in this statement as a ''time margin.''

Proper demonstration requires that the licensee meet all operator manual action acceptance criteria other than Time Margin (this is evaluated after all other criteria, including requirements in section 2(d), have been met) and show that at least one randomly-selected, established crew can successfully perform the actions within an acceptable time frame. For example, if there are questions about whether operators can reach the locations where they must perform the manual actions, these questions should be addressed to the extent practicable during the demonstration. However, successful demonstration does not fully determine reliability for the operator manual actions.

Additional factors must be considered to show that the actions can be performed reliably under the variety of conditions that could occur during a fire. For example, factors that the licensee may not be able to recreate in the demonstrations could cause further delay under real fire conditions (*i.e.*, the demonstration would likely fall short of actual fire situations). Furthermore, typical and expected variability among individuals and crews could lead to variations in operator performance. Finally, variations in the characteristics of the fire and related plant conditions could alter the time available for the operator actions.

In order to ensure that a particular action could be performed reliably, licensees must show that a sufficient amount of extra time (*i.e.*, a time margin) would be available for the action and that the process for determining the time available for the action adequately addressed the potential variations in fire characteristics and plant conditions. The time margin ensures that operator manual actions can be performed reliably: (1) Through well-thought out demonstrations that the actions are feasible, (2) by ensuring that there is extra time available for given actions with respect to the fire scenario, and (3) by adequately addressing all other related acceptance criteria.

The analysis should include realistically conservative scenarios, and such variables as environment and human performance uncertainties should be considered in the time margin. For example, a licensee may perform a worst case demonstration that requires the operator to wear a self-contained breathing apparatus (SCBA), if there is a reasonable expectation that the operators will need to pass through a zone containing smoke in order to reach the location where the operator manual action is to be carried out.

Use of a time margin is an appropriate safety factor for ensuring realistically reliable operator manual actions. The rule would require the time margin to account for all important variables, including differences between the analyzed and actual conditions and for human performance uncertainties that may be encountered.

The factors necessitating the time margin are:

1. The time margin should account for what the licensee is not likely to be able to recreate in the demonstration that could cause further delay (*i.e.*, where the demonstration falls short).

2. The time margin should account for the variability of fire and related plant conditions.

3. The time margin should account for the variability in human performance among individuals and between different crews and for the effects of human-centered factors that could become relevant during fire scenarios.

These factors are important considerations for the time margin for the following reasons:

1. They address likely limitations of the demonstration.

2. The demonstration can replicate only a subset of all possible fires and resulting variability in fire and plant conditions.

3. Some degree of human performance variability is to be expected, some of which could further delay the times to perform the desired actions during real fire situations.

In order to establish a standard to show time margin, it was necessary to establish a time margin (or margins) for fire-related operator manual actions to ensure that they would be reliably successful. In other words, if the licensee can meet all of the operator manual action acceptance criteria, which include demonstrating that at least one randomly-selected, established crew can successfully perform the actions, and show that the actions can be performed within an acceptable time frame that allows for adequate time margin to cover potential variations in plant conditions and human performance, then the operator manual action rule would be met. For example, as long as it can be shown that there is an ''X-percent'' time margin to perform the particular operator manual action, plant damage or an undesirable plant condition will still be avoided and all of the other criteria have been met, then there is confidence to conclude that the action will be performed reliably.

The establishment of an appropriate time margin requires a supported technical basis. While the best technical basis for a time margin would be empirical data from which it could be derived, a database search was unable to find relevant data that could be used directly for or generalized to the operator manual actions of interest. To further develop this concept, the NRC convened an initial expert panel to identify a time margin for inclusion in this proposed rule statement for further stakeholder consideration and feedback.

The expert panel members concluded that a time margin factor of at least 2 would ensure that the operator manual actions in response to fire are sufficiently reliable. For example, if the operator manual action can be shown typically to take less than 15 minutes, then at least 30 minutes (15×2) should be available to achieve and maintain hot shutdown. A time margin factor of at least 2 is assumed to absorb delays that might be caused by the following set of factors (1) the need to recover from or respond to unexpected difficulties or random problems associated with instruments or other equipment, or communication devices; (2) environmental and other effects that are not easily replicated in a demonstration, such as radiation, smoke, toxic gas effects, and increased noise levels; (3) limitations of the demonstration to account for all possible fire locations that may lend the need for such operator manual actions; (4) inability to show or duplicate the operator manual actions because of safety considerations while at power; and (5) individual operator performance factors, such as physical size and strength, cognitive differences, time pressure, and emotional responses. In addition, the time margin includes adequate time for personnel to recover from any initial errors in conducting the actions. The time margin concept could alternatively consist of a range of multiplicative values. For example, instead of a single multiplicative value of 2, perhaps a range of multiplicative values (*e.g.*, 2–4 times) could determine adequate time margin. This may be appropriate where additional factors were identified that may influence the timeline. These factors may be those unknown and not considered by the expert elicitation panel and which may result in a lower or higher multiplicative factor. The Commission can also foresee situations where a licensee may be able to define a different multiplicative value for different scenarios. For example, an operator manual action consisting of a single action by one plant operator could have a different multiplicative value than a scenario that involves more than one plant operator or where several sequential actions are necessary.

As with the discussion of the range of multiplicative values above, the time margin concept may have to include a minimum additive time (predetermined minimum amount of time added to the demonstrated time) necessary for certain situations. For example, the time in the demonstration is shown to be short (*e.g.*, <5 minutes for a single operator manual action), a single multiplicative value of 2 is applied resulting in an additional time of <5 minutes. There may be situations where the resulting <5 minutes of margin may not be adequate to address the factors that may cause a delay as identified above. In such situations it may be more appropriate to apply a minimum additive time (*e.g.*, 10 minutes) to account for factors that may cause a delay with the operator manual action.

Request for Comment 1: (Time Margin)

The Commission requests opinions specifically on the time margin aspects because of stakeholder interest in this subject and the Commission's desire to consider all stakeholders' input for this important criterion.

Specifically, the Commission asks the following questions:

(A) Considering the factors for time margin discussed above (including the conditional dependence on a worst-case demonstration meeting all the other acceptance criteria), should the time margin consist of a single multiplicative factor (*e.g.*, 2 times), or a range of multiplicative factors (*e.g.*, 2–4 times)? Please provide a technical basis for your proposed time frames or factors.

(B) If a range is appropriate, what should the range be and what parameters or variables should be considered in determining which part of the range is applicable in a given situation? Please provide a basis for your proposed time frames or factors.

(C) Should there be a minimum additive time (*e.g.*, 10 minutes) for situations where the time in the demonstration is so short that a multiplicative factor would not properly account for the required time margin (*e.g.*, a time in the demonstration of < 5 minutes). Please provide a basis for your proposed time frames or factors.

(D) Are there other means of establishing margin (*e.g.*, through consideration of conservative assumptions in the thermal hydraulic timeline)? Please provide a technical basis.

Environmental Factors

Paragraph 2(a)(1) of the proposed criteria requires that the fire timeline include a time margin that accounts for differences between the analyzed and actual conditions. Adverse environmental factors are one area of concern that must be considered because they affect the operator's mental or physical performance. The environmental factors must be weighed with respect to the location where the operator manual actions will be performed, as well as the access and egress routes to and from this location.

Operators' performance may be impeded by their inability to reach the required location and by the difficulty of performing the action in the conditions existing at the required location. The environment along the egress route after completion of the operator manual action must also be considered to ensure personnel health and safety throughout. These environmental factors are considered in the analysis via preparation and planning thereby ensuring there is sufficient time to travel to the location(s) and perform the action(s) required to achieve and maintain the plant in a hot shutdown condition.

Equipment Performance

Paragraph 2(a)(2) of the criteria requires the analysis to address the functionality of equipment or cables that could be adversely affected by the fire but still used to achieve and maintain hot shutdown. For example, operators may rely upon valves to achieve and maintain hot shutdown conditions. If the functionality of the valves is adversely affected by the fire then it may degrade or prevent the performance of the required operator manual actions. As identified in Information Notice 92–18 for motor-operated valves, bypassing thermal overload protection devices (discussed in Regulatory Guide 1.106, ''Thermal Overload Protection for Electric Motors on Motor Operated Valves'' Rev. 1, ML 003740323) could jeopardize completion of the safety function or cause degradation of other safety systems due to sustained abnormal circuit currents that can arise from fire-induced ''hot shorts.'' Even if these overload protection devices are not bypassed, hot shorts can cause loss of power to motor-operated valves by tripping the devices. If an operator manual action requires the manual manipulation of a depowered motor-operated valve, such fire-induced damage could make the manipulation physically impossible. Therefore, if equipment to be used during operator manual actions could be affected by fire, the licensee must determine that the functionality of that equipment will not be adversely affected.

Plant systems, structures and components (SSCs) are used to achieve and maintain hot shutdown conditions. SSCs often require active intervention, through either automatic or manual means, to perform their required function. The analysis of the fire timeline must identify all such SSCs needed to achieve maintainable hot shutdown conditions from the time of initial fire detection, particularly those that require operator manual actions to perform their hot shutdown function and explain how active equipment will be operated. Diagnostic indications relevant to the SSCs' safety function may be critical to specific operator manual actions and interaction with this equipment. Diagnostic indications are the alerting, information, control, and feedback capability provided through instrumentation. They also provide sufficient information that determines if and when these interfaces must be effected. These indications would typically be needed to: (1) Enable the operators to determine which manual actions are appropriate for the fire scenario; (2) direct the personnel as to the proper performance of the operator manual actions; and (3) provide the necessary feedback to the operators verifying that the manual actions have had their expected results. Diagnostic indications are considered in the analysis via identification of the SSCs necessary to accomplish the operator manual action and evaluation of their availability under the fire and environmental conditions expected. Guidance on identifying needed indication is provided as in paragraph c.2 of the draft regulatory guide DG–1136, ''Guidance for Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire.''

Communications Equipment

Paragraph 2(a)(3)(ii) of the proposed criteria requires the analysis to identify all communications equipment necessary to accomplish the operator manual actions. Communications equipment may be needed to provide feedback between operators in the main control room and personnel out in the plant to ensure that any activities requiring coordination between them are clearly understood and correctly accomplished. The unpredictability of fires can force staff to deviate from planned activities, hence the need to consider constant and effective communications. Communications may be needed in the performance of sequential operator manual actions (where one action must be completed before another can be started) and provide verification that procedural steps have been accomplished, especially those that must be conducted at remote locations. Communications must be considered in the analysis by identifying the necessary communications equipment and ensuring their availability to the plant operators for the time needed to achieve and maintain hot shutdown. For example, if portable radios are to be used for communications then the analysis should list the equipment and confirm that the equipment can be used in the plant areas (*i.e.*, capable of receiving and transmitting in the necessary plant areas) and are available for the time required (*e.g.*, battery power life has been considered for the time period necessary). Such communications should be identified and addressed as per paragraph c.2 of the draft regulatory guide DG–1136, ''Guidance for Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire.''

Portable Equipment

Paragraph 2(a)(3)(ii) of the proposed criteria requires the analysis to identify all portable equipment necessary to accomplish the operator manual actions. Portable equipment, especially tools such as keys to open locked areas, ladders to reach high locations, torque devices to turn valve handwheels, and electrical breaker rackout tools, can be essential to access and manipulate SSCs to successfully accomplish required operator manual actions. Similarly, life support equipment, such as self-contained breathing apparatuses (SCBA), may need to be worn to permit access to and egress from the locations where the operator manual actions must be performed since the routes could be negatively affected by fire effects, such as smoke, that propagate beyond the fire-involved area. Portable equipment must be considered in the analysis by identifying necessary equipment and ensuring their availability to the plant operators during the time needed to achieve and maintain hot shutdown. For example, if SCBA is necessary then the analysis should list the equipment and confirm that the equipment can be used in the plant areas (*i.e.*, access and egress to tight areas are not impeded by the use of SCBA) and are available for the time required (*e.g.*, portable bottle air supply provides sufficient time to perform the action). Such equipment should be identified and addressed as per paragraph c.2 of the draft regulatory guide DG–1136, ''Guidance for Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire.''

Procedures and Training

Paragraph 2(b) of the proposed criteria requires that all manual actions be included in plant procedures, and that each operator receives training on these manual actions. The role of written plant procedures in the successful performance of operator manual actions is three-fold: (1) Assist the operators in correctly diagnosing the type of plant event that the fire may trigger, usually

in conjunction with indications, thereby permitting them to select the appropriate operator manual actions (or prescribe actions to be taken should a fire occur in a given fire area); (2) direct the operators to the appropriate preventive and mitigative manual actions to place and maintain the plant in a stable hot shutdown condition; and (3) minimize the potential confusion that can arise from fire-induced conflicting signals, including spurious actuations, thereby minimizing the likelihood of personnel error during the required operator manual actions. Written procedures should contain the steps to be performed, how the operator manual actions are performed and the tools and equipment needed to successfully perform the actions.

Training on these procedures serves three supporting functions: (1) Establishes familiarity with the procedures, equipment, and potential (simulated) conditions in an actual event; (2) provides the level of knowledge and understanding necessary for the personnel performing the operator manual actions to be well-prepared to handle departures from the expected sequence of events; and (3) provides the personnel with the opportunity to practice their response without exposure to adverse conditions, thereby enhancing confidence that they can reliably perform their duties in an actual event. Determining that operators are appropriately trained on procedures entails establishing, implementing, and maintaining a training program that incorporates the instructional requirements necessary to provide qualified operators to perform the manual actions. Licensees are already required to establish training programs for licensed operator and nuclear plant personnel under 10 CFR 55.59 and 50.120, respectively. The procedures and training provided to operators and nuclear plant personnel will ensure that the supporting functions and roles discussed above can be met. Such procedures and training should be identified and addressed as in paragraph c.2 of the draft regulatory guide DG–1136, ''Guidance for Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire.'' The Commission expects plant procedures to be available at or near the locations where the operator manual actions are to occur so that they are easily accessible to the operators.

Implementation and Staffing

Paragraph 2(c) of the proposed criteria requires that equipment and personnel necessary for feasible and reliable operator manual actions must be readily available and accessible. The equipment is available when its functionality is not adversely affected by the fire or its effects. Accessible means that the personnel should be able to find and reach the locations of the components and be able to manipulate the components. Accessibility and availability of equipment must be considered in the analysis by identifying necessary equipment, ensuring operators are knowledgeable of equipment locations, determining that accessibility of such equipment, and that the equipment will not be adversely affected by a fire or its effects. For example, operators may rely upon valves to achieve and maintain hot shutdown conditions. If the functionality of the valves is adversely affected by the fire or if the valves are not accessible for manipulation then the functionality of such valves may be degraded, thereby preventing the performance of the required operator manual actions.

The intent of the staffing requirement is to ensure that qualified personnel will be on site at all times such that hot shutdown conditions can be achieved and maintained in the event of a fire. An individual expected to perform the operator manual actions must not have collateral duties, such as fire fighting or security, during the evolution of the fire scenario. This individual should be exclusively available for the performance of required operator manual actions. Therefore, operating shift staffing levels should include enough personnel on watch for the performance of any operator manual actions that could arise as a result of a fire. The fire brigade would not be expected to perform actions other than those associated with fire fighting. Otherwise, the potential for interfering with either their fire fighting activities or the operator manual actions could exist, such that successful performance of one or the other, or both, could be impaired. For example, during a fire, an individual who is part of the five-person fire brigade could not perform the required operator manual actions because that individual is expected to participate in the fire fighting efforts.

Demonstration

The concepts of feasibility and reliability were examined under Criterion 2(a) of section III.P in connection with the fire timeline and time margin. Demonstration and time margin development complement each other. Paragraph 2(d) of the proposed criteria requires demonstration in order to establish the feasibility of operator manual actions. The demonstration criterion provides reasonable assurance that the operator manual actions can be performed in the analyzed time period for a range of conceivable fire situations.

The use of such demonstrations is supported, for instance, by NUREG–1764, ''Guidance for the Review of Changes to Human Actions'' and NUREG–0711 ''Human Factors Engineering Program Review Model,'' cited in NUREG–0800, Section 18.0 Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants. NUREG–1764 states that ''* * * [a] walk-through of the human actions under realistic conditions should be performed * * * The scenario used should include any complicating factors that are expected to affect the crews[’] ability to perform the human actions * * *'' NUREG–0711 states that ''* * * an integrated system design (*i.e.*, hardware, software, and personnel elements) is evaluated using performance-based tests * * * Plant personnel should perform operational events using a simulator or other suitable representation of the system to determine its adequacy to support safety operations * * *''

There are several important elements to the demonstration criterion. First, licensees may take credit for operator manual actions only after a successful demonstration. To continue taking credit for operator manual actions, licensees must complete demonstrations such that all operating crews successfully perform the coordinated sets of operator manual actions taken as a result of a fire in a specific fire area. Periodic demonstrations, at a frequency consistent with that established by the licensee in compliance with 10 CFR 50.120, provide valuable training and experience for licensee personnel and also serve to verify that plant configuration and conditions (access, egress, etc.) have not changed over time such that the operator manual actions can no longer be accomplished in accordance with the analysis performed pursuant to paragraph III.P.2(a). Should a licensee be unable to successfully complete a subsequent demonstration, the Commission expects prompt corrective action to retrain the operators, or to modify the operator manual actions, or modify the plant conditions so that the demonstration yields successful results.

Second, the demonstration verifies an action can be completed within the analyzed fire timeline. This can be done utilizing an established crew of operators to show in the demonstration that operator manual actions can be accomplished to achieve and maintain

hot shutdown for the entire fire scenario. This serves as a benchmark for the development of a time margin, which is an application of the reliability concept. Another means of establishing time margin is through consideration of conservative assumptions in the thermal-hydraulic timeline (*e.g.*, end-state).

Third, the demonstration must be completed by an established crew. An established crew is a group of operators that normally work as a team during any one shift. Conducting the demonstration with an established crew instead of a crew assembled just for the demonstration will provide a more valid basis for the fire timeline determination, as well as provide the established crew with the training necessary to work as a team.

Fourth, operator manual actions may not be credited until those actions have been shown in the demonstrations to be feasible by satisfying all the acceptance criteria. The demonstration should ensure that all relevant aspects of the criteria are met and that important characteristics of those criteria are included in the demonstration to the extent possible. For example, environmental conditions must be considered and should be simulated where possible. This may include, but is not limited to, such considerations as expected lighting levels, protective clothing, and noise levels. This is important because it validates the demonstration by conducting it under conditions that are as realistic as possible.

Fifth, prompt corrective actions are required if any demonstration determines that the operator manual action may not be accomplished consistent with the analysis. Prompt corrective actions should be implemented at the first available opportunity consistent with the guidelines of Generic Letter 91–18, Revision 1, Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions.

As with training, the demonstration provides the crew with practical experience. All elements of the fire scenario, including the use of equipment and procedures, adequacy of staffing levels, and response to indications, should be integrated into the demonstration to develop this benchmark. In this way, any complexities, such as the number of required operator manual actions and their dependence upon one another, are evaluated and identified for appropriate consideration in the development of the time margin. Failure of an initial demonstration to show that the operator manual actions can be accomplished consistent with the analysis indicates that the manual actions are not feasible. In such cases, the licensee could modify the actions (*e.g.,* different access/egress routes, redeployment of critical equipment by placing it at the location where the operator manual actions will be performed vs. carrying it to that location), retrain the crew, such that a new demonstration satisfies the analysis, or the licensee could conclude that operator manual actions are not feasible and opt to comply with paragraph III.G.2.

C. Response to Stakeholder Comments on Operator Manual Action Acceptance Criteria

As part of the development of this proposed rule, the NRC considered stakeholder comments that provided additional insights. A number of stakeholder comments were made in response to the draft acceptance criteria intended for use in the interim enforcement discretion policy published for comment (68 FR 66501 and 69730) and in a subsequent public meeting on June 23, 2004. The comments on these criteria involved the demonstration using the same personnel/crews who are required to perform the manual actions during the fire; the application of plant procedures; the application of a fire detection and suppression system; and the application of operator manual actions criteria in all provisions of paragraph III.G.

Demonstration Criterion

A number of public comments indicated that the requirement for the demonstration to use ''the same personnel/crews who will be required to perform the actions during the fire'' is unnecessarily restrictive. The Commission agrees that requiring all crews to demonstrate performance under all conditions is unnecessarily restrictive. The intent is to provide reasonable assurance that whatever crew is on duty at the time of a fire can reliably perform the required actions, allowing for variabilities and uncertainties. The Commission considers it sufficient that an established crew (*i.e.*, one that typically works as a team) shows the ability to perform the required operator manual actions through documented demonstration. This demonstration should show that the crew can successfully perform all operator manual actions required by the entire fire scenario within the analyzed fire timeline. The demonstration should be part of the periodic operator training. To reasonably assure that the remaining crews (*i.e.*, the ones that receive training but do not perform the demonstration during a particular training cycle) can reliably perform the actions, the ''time margin'' addressed in the analysis criterion is used to offset the variability among crews. In this way, the demonstration by the established crew with an appropriate margin, will reasonably assure that any of the crews could likewise perform the required actions. Another means of determining margin is through consideration of conservative assumptions in the thermal-hydraulic timeline (*e.g.,* end-state).

Procedural Guidance vs. Guidance

A number of public comments suggested that the phrase ''procedural guidance'' be replaced by ''guidance'' (*e.g.,* pre-fire plan). The Commission considers this term insufficient to provide feasible and reliable operator manual actions. In fact, the Commission has strengthened the wording from the original ''procedural guidance'' to ''plant procedures'' to reflect the need for formal written steps. Typically, plant operators should be capable of performing noncomplex manual actions without detailed instructions. However, there are fire scenarios which could conceivably be atypical such that what would ''normally'' be non-complex could prove to be difficult in an actual situation. The reading of procedures from the control room to direct remote activities could be impeded by communication difficulties or other control room activities. In addition, operators who perform actions outside the control room may require immediate feedback from the control room, and vice versa, to determine if certain actions have produced the intended results. The Commission expects plant procedures to be available at or near the locations where the operator manual actions are to occur so that they are easily accessible to the operators.

Need for Detection and Suppression Where Fire Occurs

There appeared to be some confusion on the part of a few commenters regarding where fire detection and automatic suppression would be required in conjunction with the addition of the option for operator manual actions in complying with paragraph III.G.2. Some thought they would be required in the areas where the operator manual actions would occur. The proposed requirement for fire detectors and an automatic fire suppression system applies only to the area where the fire occurs, not to the

area(s) where the operator manual actions will take place.[5]

A few commenters questioned whether the requirement for fire detection and automatic suppression installed in the area where the fire occurs should accompany the proposed compliance option for operator manual actions, and why this could not be left to the discretion of the licensees and review by the NRC, depending on the specific conditions to be encountered in that fire area. As discussed in the staff's proposed Appendix R, dated May 29, 1980, protective features shall be provided for fire areas that contain cables or equipment of redundant systems important to achieving and maintaining safe shutdown conditions to ensure that at least one means of achieving said conditions survives postulated fires. The protective features may consist of a combination of automatic and manual fire suppression capability, fire propagation retardants, physical separation, partial fire barriers, or alternative shutdown capability independent of the room. The proposed operator manual action option in conjunction with fire detectors and an automatic fire suppression system is consistent with the requirement of protective features and maintains a similar defense-in-depth concept as with a 1-hr passive fire barrier or a 20-ft separation with no intervening combustibles.

The paragraph III.G.2 compliance option of a 3-hr passive fire barrier requires no fire detection or automatic suppression to be installed in the area where the fire occurs. To consider the option for operator manual actions as providing reasonable assurance at a level comparable to this option, one must be convinced that the implementation of operator manual actions by itself provides a sufficient level of defense-in-depth without the additional level of protection provided by fire detectors and an automatic fire suppression system. The reason that the 3-hr barrier was ''exempted'' from the additional need for fire detection and automatic suppression was the prevalent acknowledgment that a fire at a nuclear power plant lasting longer than three hours, without intervention, is highly unlikely, if not incredible. Therefore, unlike a 1-hr barrier or a 20-ft separation without intervening combustibles, this compliance option was considered to be sufficient without the additional level of defense-in-depth provided by the fire detection and automatic suppression. Experience in both the nuclear and non-nuclear industry clearly indicates that human reliability is not at a level approaching that provided by a 3-hr barrier as the sole level of defense-in-depth. Therefore, without substantial additional justification such as can be provided by using the risk-informed, performance-based option in the Fire Protection Regulation at 10 CFR 50.48(c), it is not reasonable to consider the implementation of operator manual actions without fire detection and automatic suppression as a sufficient compliance option to paragraph III.G.2.

A few commenters indicated that requiring fire detection and automatic suppression in conjunction with operator manual actions if creditable under III.G.2 ''does not enhance the ability of the operator to perform a manual action in another area of the plant that is unaffected by the fire * * * [Furthermore], this new ''requirement'' is also more severe than Appendix R, Section III.G.3 because III.G.3 only requires a ''fixed'' suppression system, either manual or automatic, but does not require an ''automatic'' suppression system * * * ''

With regard to the first claim, requiring fire detectors and an automatic fire suppression system in the fire area under consideration would enhance the ability of the operator to achieve and maintain safe shutdown from an unaffected area. The activation of detection and automatic suppression as indicated in the staff's statements of consideration for Appendix R to 10 CFR part 50 (as amended on December 1, 1980; 45 FR 79409) would ensure prompt and effective application of suppressant to a fire that could endanger safe shutdown capability. As a result, the time it takes a fire to adversely affect the licensee's ability to achieve and maintain a safe reactor shutdown may be extended, thereby enhancing the licensee's ability to perform feasible and reliable operator manual actions.

While a proposed requirement of automatic suppression for operator manual actions under paragraph III.G.2 may appear to be more severe than that of fixed suppression under paragraph III.G.3, the Commission believes that this difference is minor in practicality. Part 50, Paragraph 48(a)(1), Fire Protection, of 10 CFR states that ''each operating nuclear power plant must have a fire protection plan that satisfies Criterion 3 of Appendix A to this part.'' Appendix A, Criterion 3, Fire Protection, states that ''Fire detection and fighting systems of appropriate capacity and capability shall be provided and designed to minimize the adverse effects of fires on structures, systems, and components important to safety.'' If a non-water, fixed suppression system (*i.e.*, a gaseous suppression system) is used to comply with III.G.3, the governing standards from the NFPA essentially dictate that the system be automatic, unless an exception is granted.[6] If a fixed water system is used to comply with III.G.3, it can be non-automatic (*i.e.*, manually activated). However, the requirement that it be ''fixed'' means that its infrastructure is essentially the same as an automatic system, such that the practical difference between automatic and fixed suppression in areas III.G.2 and III.G.3 is minimal.

Finally, in both paragraphs III.G.2 and III.G.3, the requirement for fire detection and suppression (automatic or fixed) provides a degree of ''defense-in-depth'' to the passive fire protection features already in place (except in the case of the 3-hr fire barrier, where this is deemed sufficient without detection or suppression). Defense-in-depth is a recognized cornerstone in NRC policy to protect the public health and safety. Therefore, maintaining defense-in-depth is recognized as providing safety benefit in and of itself.

When the NRC proposed the original ''Fire Protection Program for Nuclear Power Plants Operating Prior to January 1, 1979,'' on May 29, 1980 (45 FR 36082), it specified that ''the following minimum fire protective features shall be provided: (a) An early warning detection system; (b) manual fire suppression capability; and (c) fixed fire suppression systems and alternative shutdown capability as shown on Table 1.'' In Table 1, the need for fixed fire suppression systems, automatic or manual, was based on four factors: (1) Does the fire/water disable normal shutdown capability; (2) is shutdown

[5] Only in the presumably rare case where the operator manual actions would also occur in the same fire area as the fire itself would fire detectors and an automatic fire suppression system have to be installed ''in the area where the operator manual actions are taken'' for these operator manual actions to receive credit. This is envisioned only if a very large fire area experiences a very localized fire such that the fire effects do not preclude access to, egress from, and operator manual actions in, a distant location within the very large area.

[6] NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, Section 1–8.1.1, requires use of ''automatic detection and automatic actuation,'' with the exception that ''manual-only actuation can be used if acceptable to the authority having jurisdiction [the NRC] where automatic release could result in an increased risk.'' NFPA 12A, Standard on Halon 1301 Fire Extinguishing Systems, Section 2–3.1.1, similarly states that ''automatic detection and automatic actuation shall be used,'' with a similar exception that ''manual-only actuation shall be permitted to be used if acceptable to the authority having jurisdiction [again, the NRC].'' NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, Section 2–3.1.1, parallels NFPA 12A exactly.

available from the control room; (3) is shutdown required from an alternate panel (if not available in the control room); and (4) is the access for manual fire fighting ''good'' or ''poor.'' A fixed fire suppression system was required whenever shutdown had to be performed at an alternate panel, except if (a) the only in-situ combustible was cable insulation; (b) measures were provided to retard propagation; and (c) separation between redundant systems was at least 10 feet horizontal and vertical of clean air space. These requirements were enhanced when they subsequently became paragraphs 1, 2 and 3 of section III.G in the final rule. It should be noted that even during the original rulemaking for Appendix R, the need for at least fixed fire suppression was recognized when shutdown operations would consist of ex-control room operator manual actions (which include those performed at an alternate panel).

In developing Appendix R, section III.G, the NRC originally considered fire detection and automatic suppression, if not as the primary level of defense-in-depth, at least as an equal level of defense-in-depth in conjunction with fire-retardant coatings, and subsequently their successors, fire barriers and/or physical separation, as stated in the ''Statements of Consideration, 10 CFR part 50, Fire Protection Program for Operating Nuclear Power Plants,'' (November 19, 1980, 45 FR 76602).

''* * * [T]he NRC staff has indicated to the Commission that there are requirements * * * in which the protection afforded by Appendix R over and above that previously accepted, may be desirable. The Commission has decided that these requirements should be retroactively applied to all facilities * * * to take fully into account the increased knowledge and experience developed on fire protection matters over the last several years. The first of these [requirements] * * * is related to fire protection features for ensuring that systems and associated circuits used to achieve and maintain a safe shutdown are free from fire damage. Appendix A to BTP CMEB 9.5–1 permits a combination of fire-retardant coatings and fire detection and suppression systems without specifying a physical separation distance to protect redundant systems, and such arrangements were accepted in some early fire protection reviews. As a result of some separate effects tests, the staff changed its position on this configuration, and subsequent plans have been required to provide additional protection in the form of fire barriers or substantial physical separation for safe shutdown systems. No credit for such coatings as fire barriers is allowed by Section III.G of Appendix R.''

The NRC originally characterized fire-retardant coatings, and subsequently their successors, fire barriers and/or physical separation, as ''additional,'' implying that detection and suppression were intended to be primary. The requirement that detection and suppression (automatic) be included with Appendix R, paragraph III.G.2, operator manual actions is not only consistent with the corresponding options currently there, but also is consistent with NRC's original intent in developing Appendix R, section III.G.

The risk-informed, performance-based option in 10 CFR 50.48(c) is available to those licensees who wish to demonstrate that operator manual actions in particular situations provide a reasonable assurance that the public health and safety can be maintained without fire detection or automatic suppression. Although the exemption process is available for cases that can be justified under § 50.12, the Commission considers the use of the option proposed by this rulemaking or the risk-informed, performance-based option currently provided in 10 CFR 50.48(c) more desirable in order to minimize the need for future exemption requests for addressing operator manual actions.

Request for Comment 2

After considering the technical implications and historical background of the proposed criteria as discussed above, the Commission has tentatively decided that the proposed operator manual actions rulemaking should require fire detectors and an automatic fire suppression system in the fire area to permit operator manual actions as a compliance option under paragraph III.G.2, provided the acceptance criteria delineated in a new paragraph III.P are satisfied. The basis for the requirement is discussed above. However, because of the stakeholder interest in this subject, the Commission is asking for specific feedback and opinions from stakeholders on requiring an automatic versus fixed fire suppression system in the fire area.

The Commission asks the following specific question:

Under the proposed option of using operator manual actions under III.G.2.c–1, when redundant trains are located in the same fire area, should the requirement for a suppression system in the fire area be automatic or fixed? An automatic suppression system is required in III.G.2(b) and (c). However, a fixed system is specified in III.G.3. Provide the rationale for why requiring fixed or automatic suppression would provide the appropriate level of protection in the proposed paragraph III.G.2(C–1).

Application of Operator Manual Actions Acceptance Criteria to Paragraphs III.G.1 and III.G.3

The proposed operator manual actions rulemaking would modify requirements in paragraph III.G.2 to permit operator manual actions as a compliance option under this paragraph, provided the acceptance criteria delineated in a new paragraph III.P are satisfied. The proposed rule language would not apply to paragraphs III.G.1 or III.G.3, although the term ''operator manual actions'' may be construed as applicable to the same types of actions taken under these paragraphs. This issue has been raised by stakeholders during discussions conducted thus far, and therefore, the Commission is providing background information about this subject and a specific request for comment.

Appendix R to 10 CFR 50, section III.G.1 requires fire protection features capable of limiting fire damage so that one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s)[7] is free of fire damage. The NRC considers redundant trains located in completely *separate fire areas* to comply with III.G.1. Paragraph III.G.1 also allows a licensee to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s).

Where redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located in the *same fire area,* paragraph III.G.2. requires one of three means to ensure that one of the trains is free of fire damage. Through this rulemaking, the Commission is proposing to add a fourth means.

Where the protection of systems required to function properly for hot shutdown does not satisfy the requirement of paragraph III.G.2, or where redundant trains of systems required for hot shutdown may be subject to damage as a result of fire suppression activities or the inadvertent actuation of fire suppression systems, paragraph III.G.3 requires that an alternative or dedicated shutdown capability must be provided and must be independent of cables, systems or components in the area, room, or zone under consideration. In addition, paragraph III.G.3 further requires that

[7] Regulatory Guide (RG) 1.189 Fire Protection for Operating Reactors defines an ''emergency control station'' as a ''location outside the MCR where actions are taken by operations personnel to manipulate plant systems and controls to achieve safe shutdown of the reactor.''

fire detection and a fixed fire suppression system must be installed in the area, room, or zone under consideration. Specific criteria for implementing this capability are contained in Appendix R, paragraph III.L, ''alternative and dedicated shutdown capability,'' including such features as the performance goals for specific functions (*e.g.,* maintaining RCS process variables within those predicted for a loss of normal AC power, with makeup function capable of maintaining the reactor coolant level above the top of the core for BWRs and within level of pressurizer indication for PWRs), and to achieve cold shutdown within 72 hours.

Feedback from the stakeholders on the **Federal Register** Notice (68 FR 66501; November 26, 2003) made clear that some stakeholders believe that acceptance criteria for operator manual actions should be expanded to other provisions of paragraph III.G of Appendix R to 10 CFR part 50. For example, one commenter stated that ''[R]ather than changing Appendix R, Section III.G.2, we recommend that the NRC issue generic industry guidance clarifying that manual actions are permissible to satisfy all subsections of Appendix R, Section III.G, and that manually operating equipment locally satisfies the ''emergency control stations'' provision of Appendix R, Section III.G.1. This approach maintains maximum consistency with existing NRC guidance and avoids the creation of a separate set of standards that are only applicable to ''III.G.2'' manual actions. Otherwise, establishing criteria specifically applicable to Appendix R, Section III.G.2, will lead to new disputes when manual actions previously credited to satisfy Sections III.G.1 and III.G.3 are reviewed during the inspection process.''

Another commenter stated that ''This [sic—These] proposed interim acceptance criteria should state NRC's current expectations for feasibility of all manual actions. This maintains the maximum consistency with existing NRC guidance, and avoids the creation of a separate set of standards only applicable to ''III.G.2'' manual actions. Establishing criteria specifically applicable to ''III.G.2 manual actions'' will lead to unnecessary confusion about whether an action is a ''III.G.1.a action'' or a ''III.G.2 action''.

In addition to the written public comments, the NRC received comments during a June 23, 2004, Category 3 public meeting in Rockville, Maryland discussing application of operator manual actions criteria to paragraphs III.G.1 and III.G.3. During this meeting the industry stated that it will conduct a survey of licensees shortly following issuance of the proposed rule to determine their position and consensus on the application of operator manual action criteria to 10 CFR part 50, Appendix R, paragraphs III.G.1 and III.G.3.

There were two issues identified by stakeholders relative to operator manual actions. The first was specific operator manual actions within individual paragraphs III.G.1, III.G.2, and III.G.3. The second was the applicability of the proposed operator manual actions acceptance criteria to all provisions of paragraph III.G.

Operator manual actions, as currently outlined in the proposed rule, would be used as an additional option to satisfy paragraph III.G.2 requirements. However, based on stakeholder comments, the NRC is asking for feedback from stakeholders on the advantages and disadvantages of also applying operator manual action acceptance criteria to paragraphs III.G.1 and III.G.3.

The NRC believes that there are technical and backfit considerations associated with expanding the applicability of operator manual action acceptance criteria to paragraphs III.G.1 and III.G.3.

A III.G.3—compliant Fire Area contains redundant trains of shutdown equipment or cables and one train has not been ensured to remain free of fire damage (per III.G.2 criteria), or redundant trains are vulnerable to damage as a result of fire suppression activities or the inadvertent actuation of fire suppression systems. As noted, paragraph III.L contains specific provisions concerning this alternate or dedicated shutdown capability. For instance, it contains criteria such as III.L.3 ''Procedures shall be in effect * * *,'' and III.L.4 ''The number of operating shift personnel * * * required to operate such equipment shall be on site at all times.'' However, they are not as comprehensive as the proposed acceptance criteria in paragraph III.P. The NRC believes that if it applied the proposed acceptance criteria in paragraph III.P to paragraph III.G.3, it may be necessary to modify paragraph III.L.

In addition, the NRC believes that operator manual actions previously approved for paragraph III.G.3 would need to be revisited in order to ensure that they satisfy the acceptance criteria as proposed for paragraph III.G.2.

Applying the same new acceptance criteria to all fire protection manual actions in paragraph III.G may require a generic backfit analysis since the current rule allows the use of manual actions at emergency control stations in III.G.1 with no codified acceptance criteria and in III.G.3 with less specific acceptance criteria. Section 50.109(a)(3) provides the standard for a backfit analysis that must show ''a substantial increase in the overall protection * * * and that the direct and indirect costs of implementation * * * are justified in view of this increased protection.'' The extent of licensees' usage of manual actions is highly plant specific and the associated costs and benefits of backfitting are therefore difficult to quantify. Furthermore, applying the acceptance criteria to all paragraph III.G manual actions could invalidate the use of some existing manual actions. The subsequent hardware/fire barrier/program modifications that would then be needed could be very expensive. Thus, value-impact analyses in many cases would probably show that backfitting is not cost-beneficial.

Alternatively, if a generic analysis cannot justify the backfit under 10 CFR 50.109(a)(3), the NRC may be able to justify the backfitting as necessary for ''adequate protection'' under 10 CFR 50.109(a)(4)(ii). Recent inspection experience has not shown major issues with respect to the use of operator manual actions, thus, not providing significant support to justify that the backfit is needed for adequate protection. Further, NRC inspections of potentially risk-significant (''greater than green'') findings on such manual actions are already handled by the Reactor Oversight Process (ROP) corrective action program or are evaluated as plant-specific backfits, as applicable.

Regardless of the applicable section under 10 CFR 50.109, a backfit may ultimately enhance safety, as a result of a consistent set of rules. However, backfitting the operator manual actions' acceptance criteria to all plants may cause plants with existing operator manual actions previously approved under a different set of criteria to resubmit exemption requests for staff review and approval.

Applying new acceptance criteria on a forward-fit basis for operator manual actions under III.G.3 might be a means of addressing this backfit concern. Under this approach, application of the new acceptance criteria to III.G.3 would apply to operator manual actions that resulted from *future* licensing basis changes after the effective date of the new rule. The new acceptance criteria would thus apply to all III.G.2 operator manual actions, but to only a small percentage of the manual actions credited under III.G.3. This approach,

however, may increase the regulatory complexity and burden associated with fire protection inspections and further complicate the fire protection licensing basis of each facility.

Applying the new acceptance criteria to all operator manual actions in III.G.2 and III.G.3, would make fire protection implementation and inspections more consistent, reliable and predictable. However, the NRC also notes that the existing requirements vary among plants for several reasons; for example, post-1979 plants were not specifically licensed to Appendix R, and thus these provisions would not apply to them absent other regulatory action, which would tend to offset the possible consistency gain.

Request for Comment 3

After considering a number of technical and regulatory implications, the Commission has tentatively decided to limit the applicability of this proposed rule on operator manual actions to paragraph III.G.2. However, because of the stakeholder interest in this subject, the Commission is also asking for specific feedback and opinions from stakeholders on applying operator manual actions acceptance criteria to paragraphs III.G.1 and III.G.3. Depending on the comments received, the Commission may extend application of the criteria to paragraphs III.G.1 and III.G.3.

The Commission asks the following specific question:

Should the operator manual action acceptance criteria developed for III.G.2 also be applied to operator manual actions for III.G.1 and III.G.3? Are there advantages or disadvantages not noted by the Commission that should be considered? Please provide a discussion outlining the basis for your response taking into account the considerations outlined in the supplementary information section of this document.

IV. Interim Enforcement Discretion Policy

In SECY–03–0100, ''Rulemaking Plan on Post-Fire Operator Manual Actions,'' dated June 17, 2003, the NRC staff recommended development of an interim enforcement policy relying on preliminary acceptance criteria for manual actions. The staff proposed this strategy based on a belief that interim acceptance criteria could be developed that would be consistent with the manual actions acceptance criteria in the final rule. The Commission had previously approved a similar enforcement discretion policy related to a fitness-for-duty proposed rulemaking. In an SRM dated September 12, 2003, the Commission approved the staff's recommendation.

In March 1998, the NRC issued EGM 98–02, ''Enforcement Guidance Memorandum—Disposition of Violations of Appendix R, Sections III.G and III.L Regarding Circuit Failures,'' that provides enforcement guidance for issues related to fire-induced circuit failures, which encompasses the vast majority of manual actions as compensatory measures to satisfy the regulatory requirements. This EGM was developed based on an apparent widespread misunderstanding of the requirements on the part of licensees and remains in effect until December 31, 2005. The EGM provides guidance for disposition of noncompliances involving fire-induced circuit failures, which could prevent operation or cause maloperation of equipment needed to achieve and maintain post-fire safe shutdown. Among the enforcement conditions, discretion will be given for cases where licensees do not dispute that a violation of regulatory requirements has occurred with respect to a nonconformance and that licensees take prompt compensatory actions and also take corrective action within a reasonable time. The expectations of this EGM have been incorporated into the current NRC Enforcement Manual. In addition, the Office of Nuclear Reactor Regulation issued a revised Inspection Procedure (IP) 71111.05 in March 2003 incorporating interim operator manual actions acceptance criteria. The inspection procedure provides guidance to assess and ensure that plant specific operator manual actions meet the interim acceptance criteria and that corrective actions taken by the plants will achieve and maintain safe shutdown condition.

On November 26, 2003 (68 FR 66501), the NRC staff published a **Federal Register** notice soliciting public comments on specific acceptance criteria for operator manual actions to be considered for use in developing an interim enforcement discretion policy for post-fire operator manual actions. In addition, as part of the proposed rule development, the staff has had numerous interactions with industry and public stakeholders to discuss rule requirements and the more developed operator manual actions acceptance criteria. Based on these meetings and comments in response to the November 26, 2003, **Federal Register** notice, the Commission believes that the proposed rule's acceptance criteria and detection and suppression requirements are still evolving, such that the new interim enforcement guidance developed in conjunction with the proposed rule may not be consistent with the requirements specified in the final rule.

The current applications of EGM 98–02 and IP 71111.05 are effective to ensure and maintain the overall plant safety by licensees through the use of adequate and appropriate compensatory measures in the form of operator manual actions implemented under the licensee's Fire Protection Program. Manual actions that fail to meet the criteria in the inspection procedure are not considered to be feasible or to be adequate compensatory measures. Such manual actions will result in the non-compliance being entered into the enforcement process. The new interim enforcement policy for the post-fire operator manual actions would utilize a disputed set of acceptance criteria and trigger additional reviews (by licensees and inspectors) of past findings, with the prospect of a third review being necessary upon issuance of the final rule. Issuing such an enforcement discretion policy at this time could also have the unintended consequence of preempting the rulemaking process without a clear safety benefit.

Based on the above, the Commission believes that the continued use of the current enforcement discretion policy of EGM 98–02 and the guidance in IP 71111.05 is sufficient in the interim and that a revision of the existing policy or development of additional policy to include specific operator manual actions acceptance criteria is not warranted.

V. Section-by-Section Analysis of Substantive Changes

Part 50, Appendix R, paragraph III.G.2. Add an ''or'' at the end of the paragraph c. The change is necessary for the introduction of a new option that recognizes operator manual actions as an alternative method to satisfy the requirements set forth in paragraph III.G.2.

Part 50, Appendix R, paragraph III.G.2. Add paragraph c–1, ''Operator actions that satisfy the acceptance criteria in paragraph III.P. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.'' This paragraph would codify use of operator manual actions in conjunction with fire detectors and an automatic suppression system installed in the fire area as an additional alternative compliance method. The licensees implementing this voluntary alternative or any of the existing alternatives currently set forth in this paragraph would provide reasonable assurance that at least one method for achieving and maintaining hot shutdown condition would remain

available during and after a postulated fire anywhere in the plant. This paragraph numbering was chosen to preserve the numbering of subsequent requirements within paragraph III.G.2.

Part 50, Appendix R. Add paragraph III.P [Acceptance Criteria for Operator Manual Actions]. The new paragraph P would define operator manual actions and set forth the required acceptance criteria which must be met before a licensee may use operator manual actions to comply with paragraph III.G.2 of Appendix R.

Proposed paragraph III.P.1 [Definition]. Paragraph III.P.1 adds a definition for operator manual actions.

Proposed paragraph III.P.2. Paragraph III.P.2 sets forth the requirements and acceptance criteria for relying on operator manual actions.

Proposed paragraph III.P.2.a requires that an analysis be performed for operator manual actions and that the feasibility and reliability of these actions be demonstrated. The analysis must also address the fire timeline and identify all manual actions that must be completed; the equipment needed; the number of operators needed; the communication equipment needed; and the time available, including time margin, for the operators to perform the actions before unsafe plant conditions occur.

Proposed paragraph III.P.2.b contains requirements for plant procedures that must include each operator manual action required to achieve and maintain hot shutdown. It also includes operator training requirements for those procedures.

Proposed paragraph III.P.2.c contains requirements that systems and equipment needed to accomplish operator manual actions are available and equipment is readily accessible consistent with the analysis required by subparagraph III.P.2(a). It also includes a requirement that the number of operating shift personnel required to perform the operator manual actions must be on site at all times.

Proposed paragraph III.P.2.d contains requirements for periodic demonstrations of the operator manual actions and corrective actions.

VI. Plain Language

A June 1, 1988, presidential memorandum entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FRN 31883). In compliance with this directive, editorial changes have been made in the proposed revision to improve the organization and readability of the existing language of the paragraph being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and readability of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading of the preamble.

VII. Voluntary Consensus Standards

The National Technology Advancement and Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such standards is inconsistent with applicable law or otherwise impractical. The NRC is aware of the guidance on operator manual actions contained in ANSI/ANS Standard 58.8 (1994), ''Time Response Design Criteria for Safety-Related Operator Actions.'' This standard contains criteria that establish time requirements for use in the design of safety-related systems for nuclear power plants. The objective of the criteria is to determine whether sufficient time exists for operators to perform the required operator manual actions to operate safety-related systems or whether automatic actuation is required. The scope of the standard is ''limited to safety-related operator actions associated with design basis events (DBEs) that result in a reactor trip and is required to be analyzed in safety analysis reports (SARs).'' The NRC considers this industry consensus standard relevant to the proposed rulemaking, but not acceptable as a replacement for it. Operator manual actions performed for the purpose of fire protection are beyond the intended application of this standard. However, the principles and methods contained in the standard may be adaptable to the proposed rulemaking and have been considered as part of the NRC's effort to develop generic operator manual actions acceptance criteria.

The NRC is further aware of draft guidance for review of license amendment requests that contain risk-important human actions. The NRC staff issued NUREG–1764, ''Guidance for the Review of Changes to Human Actions,'' as a draft report for public comment with the comment period closing on March 31, 2003. This NUREG proposes a risk-informed methodology for the review of the human performance aspects of licensees' proposed changes to plant systems and operations in license amendment requests. In addition to using risk insights to help the staff determine the level of regulatory review expended on licensees' submittals relying on human actions, the NUREG provides deterministic review criteria for evaluating the acceptability of human actions proposed by licensees.

The NRC notes that a separate rulemaking for 10 CFR 50.48(c), ''National Fire Protection Association Standard NFPA 805,'' has recently been completed which permits nuclear power plant licensees to develop a risk-informed, performance-based fire protection program consistent with voluntary consensus standard NFPA 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants.'' Appendix B of NFPA 805 specifies a method for assessing the feasibility of operator manual actions. The NRC believes that licensees who choose to implement the NFPA 805 approach could alternatively, with appropriate analysis and documentation, use it to justify the acceptability of certain operator manual actions in their fire protection programs.

In preparing the proposed rule, the NRC considered the applicability of the risk-informed approach and the deterministic review criteria presented in NUREG–1764 and Appendix B of NFPA 805 to help refine the regulatory requirements and the implementation guidance. The NRC is not aware of any other consensus standard that could be adopted to provide guidance or criteria for the use of operator manual actions, but will consider using an alternative standard if one is identified during the rulemaking process.

VIII. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The basis for this determination is as follows:

This action would establish regulations that allow nuclear power plant licensees to use manual actions by plant operators as an alternative method to achieve hot shutdown conditions in the event of fires in certain plant areas, provided that the actions are evaluated against specified criteria and determined to be feasible and reliable, and that fire detectors and an automatic fire suppression system are provided in the fire area. This proposed action also provides conservative and thorough regulatory acceptance criteria for

operator manual actions taken under Paragraph III.G.2 of Appendix R to achieve and maintain hot shutdown conditions.

The proposed action will not significantly increase the probability or consequences of an accident. No changes are being made in the types or quantities of radiological effluents that may be released off site, and there is no significant increase in public radiation exposure since there is no change to facility operations that could create a new or affect a previously analyzed accident. The staff believes there will be no net change in occupational radiation exposure. Any potential increase in exposure to personnel performing or demonstrating operator manual actions will likely be offset by a reduction of occupational radiation exposure since fewer personnel will be required to install or maintain fire barriers in or near radiologically controlled areas.

With regard to nonradiological impacts, no changes are being made to nonradiological plant effluents and there are no changes in activities that could adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative to this action is the no-action alternative. The no-action alternative would result in licensees proposing to use the risk-informed, performance-based alternative provided in 10 CFR 50.48(c) or submitting exemptions to authorize the use of acceptable operator manual actions. The NRC's approval of these actions would have the same environmental impacts as the proposed action.

The determination of this environmental assessment is that this action will have no significant offsite impact on the public. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to all State Liaison Officers and requested their comments on the environmental assessment.

IX. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Part 50, ''Fire Protection Program—Post Fire Operator Manual Actions'' (Proposed Rule).

The form number if applicable: Not applicable.

How often the collection is required: As needed.

Who will be required or asked to report: Licensees for nuclear power plants licensed to operate before January 1, 1979, who wish to implement fire protection manual actions.

An estimate of the number of annual responses: 8.

The estimated number of annual respondents: 8.

An estimate of the total number of hours needed annually to complete the requirement or request: A reduction of 745 hours annually (−2,880 hours reporting plus 2,135 hours recordkeeping,) or a reduction of 93 hours per respondent.

Abstract: The NRC is proposing to amend its regulations pertaining to fire protection under 10 CFR part 50, Appendix R, Paragraph III.G.2, to allow the voluntary use of manual actions by operators of nuclear power plants licensed to operate prior to January 1, 1979, to achieve hot shutdown conditions in the event of fires in certain plant areas, provided the actions are evaluated against specific criteria that have been determined to be acceptable by the NRC.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by April 6, 2005, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *John_A._Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examined the costs and benefits of Commission alternatives for updating the existing rule to accommodate technological advances.

The analysis examined two baselines. The Main baseline reflects the effects of the rule as of the date of publication, that is, full compliance with all existing regulations. The Industry Practices baseline reflects a more ''real world'' assessment of compliance.

The regulatory alternatives examined under each baseline were No Action, under which no regulatory changes would be undertaken; Regulatory Guidance, under which Section 50.48 and Appendix R would not be modified but regulatory guidance would be updated; and the Proposed Alternative, under which the proposal outlined above would be implemented.

The regulatory analysis showed that the proposed alternative was the most cost beneficial of the three alternatives. The benefit is the greatest under the Industry Practices baseline because fourteen reactors would take immediate advantage of the proposed rule with corresponding savings to industry.

Option 3, the Proposed Alternative, was determined to be the most preferable based on best professional

judgment and quantitative analysis because it (1) improves effectiveness and efficiency of the NRC regulatory process by assuring adequate and uniform operator manual actions; (2) eliminates the need for some licensees to request exemptions from Paragraph III.G.2 or make equipment modifications; and (3) reduces NRC costs by reducing the number of exemption requests to be reviewed. Under Option 3, public health and safety would be maintained at the current level.

The results of the analysis are summarized in the following table.

NET PRESENT VALUE OF REGULATORY ALTERNATIVES

Baseline	Option 1 no action	Option 2 regulatory guidance	Option 3 proposed alternative
Main		($42,240)	$13,992,793
Industry Practices		(42,240)	16,839,000

The Commission requests public comment on the draft regulatory analysis. The regulatory analysis may be viewed and downloaded via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*. Single copies of the analysis are also available from David T. Diec, Office of Nuclear Reactor Regulation, (301) 415–2834, e-mail *dtd@nrc.gov* or Alexander Klein, Office of Nuclear Reactor Regulation, (301) 415–3477, e-mail *ark1@nrc.gov*. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810).

XII. Backfit Analysis

Section 50.109 (a)(1) defines backfitting as ''the modification of or addition to systems, structures, components, or design of a facility * * * any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position.'' The requirements in Appendix R are only applicable to licensees who received operating licenses before January 1, 1979. To resolve an existing regulatory compliance issue for these licensees under paragraph III.G.2 of Appendix R, the proposed rule represents a voluntary alternative to the current requirements. The proposed rule would allow the use of operator manual actions for achieving and maintaining hot shutdown during a fire in an area where redundant shutdown trains are located as an additional method beyond the three alternatives presently provided. Licensees who currently have approved operator manual actions will not be required to perform any additional actions (such as analysis or documentation). Licensees who employ operator manual actions but have not received NRC approval are in violation of paragraph III.G.2 of Appendix R. There is no backfitting as defined in 10 CFR 50.109(a)(1) because licensees may choose to continue to meet paragraph III.G.2 through other provisions.

Post-January 1, 1979 licensees who use operator manual actions without NRC approval may or may not be in compliance with applicable fire protection requirements (GDC–3, § 50.48(a), applicable license conditions, or current fire protection programs). Compliance for plants licensed after January 1, 1979, depends on the specific licensing commitments, the change control process, and how the change was justified and analyzed to demonstrate that the operator manual actions are feasible and reliable and do not adversely affect the ability to achieve or maintain safe shutdown. This rule is not applicable to these licensees as they are not required to meet Appendix R.

Based on the above discussion, the NRC has concluded that the proposed rule would not constitute a backfit as defined in 10 CFR 50.109(a)(1).

List of Subjects 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Backfitting, Reporting and record keeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841).

Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235).

Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844).

Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239).

Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In Appendix R to Part 50, Section III.G.2.c. is revised and a new Section III.G.2.c–1 and Section III.P. are added to read as follows:

Appendix R to Part 50—Fire Protection Program For Nuclear Power Facilities Operating Prior to January 1, 1979

* * * * *

III. Specific Requirements

* * * * *

G. * * *

2. * * *

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire areas; or

c–1. Operator manual actions that satisfy the acceptance criteria in paragraph III.P. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

* * * * *

P. 1. For purposes of this section, operator manual actions means the integrated set of actions needed to ensure that a redundant train of systems necessary to achieve and maintain hot shutdown conditions located within the same area outside the primary containment is free of fire damage.

2. A licensee relying on operator manual actions must meet all of the following requirements:

(a) *Analysis.* The licensee shall prepare an analysis for each operator manual action which demonstrates its feasibility and reliability.

(1) The analysis must contain a postulated fire timeline showing that there is sufficient time to travel to action locations and perform actions required to achieve and maintain the plant in a hot shutdown condition under the environmental conditions expected to be encountered without jeopardizing the health and safety of the operator performing the manual action. The fire timeline shall extend from the time of initial fire detection until the time when the ability to achieve and maintain hot shutdown is reached, and shall include a time margin that reasonably accounts for all important variables, including (i) differences between the analyzed and actual conditions, and (ii) human performance uncertainties that may be encountered.

(2) The analysis must address the functionality of equipment or cables that could be adversely affected by the fire or its effects but still used to achieve and maintain hot shutdown.

(3) The analysis must identify all equipment required to accomplish the operator manual actions within the postulated timeline, including (but not limited to) (i) all indications necessary to identify the need for the operator manual actions, enable their performance and verify their successful accomplishment, and (ii) any necessary communications, portable, and life support equipment.

(b) *Procedures and training.* Plant procedures must include each operator manual action required to achieve and maintain hot shutdown. Each operator must be appropriately trained on those procedures.

(c) *Implementation.* The licensee shall ensure that all systems and equipment needed to accomplish each operator manual action are available and readily accessible consistent with the analysis required by paragraph 2(a). The number of operating shift personnel required to perform the operator manual actions shall be on site at all times.

(d) *Demonstration.* Periodically, the licensee shall conduct demonstrations using an established crew of operators to demonstrate that operator manual actions required to achieve and maintain the plant in a hot shutdown condition can be accomplished consistent with the analysis in paragraph 2(a) of this section.

The licensee may not rely upon any operator manual action until it has been demonstrated to be consistent with the analysis. The licensee shall take prompt corrective action if any subsequent periodic demonstration indicates that the operator manual actions can no longer be accomplished consistent with the analysis.

Dated at Rockville, Maryland, this 24th day of February, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–4314 Filed 3–4–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20065; Airspace Docket No. 05–ACE–7]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Monett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Monett, MO. It also proposes to modify the Class E5 airspace at Monett, MO.

DATES: Comments for inclusion in the Rules Docket must be received on or before April 19, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20065/ Airspace Docket No. 05–ACE–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20065/Airspace Docket No. 05–ACE–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be assessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Monett, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Monett Municipal Airport. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with Springfield Terminal Radar Approach Control Facility.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Monett, MO. An examination of this Class E airspace area for Monett, MO revealed noncompliance with FAA directives. This proposal would correct identified discrepancies by increasing the area from a 6.5-mile to a 7.5-mile radius of Monett Municipal Airport, eliminating the extension to the airspace area, correcting errors in the Monett Municipal Airport airport reference point, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Monett Municipal Airport and brining the airspace area into compliance with FAA directives. Both areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This proposed rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Monett Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Monett, MO

Monett Municipal Airport, MO
(Lat. 36°54′22″ N., long. 94°00′46″ W)

Within a 4.5-mile radius of Monett Municipal Airport.

* * * * *

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

* * * * *

ACE MO E5 Monett, MO

Monett Municipal Airport, MO
(Lat. 36°54′22″ N., long. 94°00′46″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Monett Municipal Airport.

* * * * *

Issued in Kansas City, MO, on February 24, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4285 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R04–OAR–2004–TN–0003–200428(b); FRL–7881–6]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Nashville, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by Tennessee for the Pollution Control District (PCD) of the Metro Public Health Department for Nashville/Davidson County on May 28, 2002, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted to satisfy Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Nashville/Davidson County State Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by April 6, 2005.

ADDRESSES: Comments may be mailed to Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is

published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Melissa Krenzel at (404) 562–9196.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: February 11, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–4336 Filed 3–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI–2002–0001; FRL–6724–9]

RIN 2025–AA12

Dioxin and Dioxin-Like Compounds; Toxic Equivalency Reporting; Community Right-To-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA is proposing revisions to the reporting requirements for the dioxin and dioxin-like compounds category. Toxic equivalents (TEQs) are a weighted quantity measure based on the toxicity of each member of the dioxin and dioxin-like compounds category relative to the most toxic members of the category, *i.e.*, 2,3,7,8-tetrachlorodibenzo-p-dioxin and 1,2,3,7,8-pentachlorodibenzo-p-dioxin. Under EPCRA section 313, EPA currently requires that facilities report dioxin and dioxin-like compounds in units of total grams for the entire category, and provide a single distribution of the individual dioxin and dioxin-like compounds at the facility. This distribution must represent either total releases, or releases to the media (air, land, water) for which the facility has the best information. The three options discussed in this proposed rule would require reporting (on a new TRI Form R–D) of available information on all relevant portions of the form (*e.g.*, for each waste stream). One option would require the additional reporting of TEQs only. The two preferred options would require reporting of the mass quantity of each individual member of the category and differ primarily in whether the Agency or the facility would perform TEQ computations. Under each of these options, this new information would be in addition to the total grams data currently reported for the entire category and would replace the current reporting of a single distribution of the members of the category. EPA is proposing these revisions in response to requests from members of the public that EPA provide facilities with a method of reporting TEQ data. Comment is specifically sought on all options as well as EPA's preferences for implementing TEQ reporting.

DATES: Comments, identified by the Docket ID No. TRI–2002–0001, must be received by EPA on or before May 6, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. TRI–2002–0001, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. TRI–2002–0001. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, 20004, telephone: 202–566–1744, Attention Docket ID No. TRI–2002–0001. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. TRI–2002–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established an official public docket for this action under Docket ID No. TRI–2002–0001. The public docket includes information considered by EPA in developing this proposed rule, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. 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 OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading

Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0743; fax number: 202–566–0741; e-mail: *bushman.daniel@epamail.epa.gov,* for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–424–9346, in Virginia and Alaska: 703–412–9810 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Proposed Rule Apply to Me?

You may be potentially affected by this proposed rule if you manufacture, process, or otherwise use dioxin and dioxin-like compounds. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094); 12 (except 1241); or 20 through 39; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*); or 5169; or 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government	Federal facilities.

This table 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 the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. 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. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. 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). The EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority for Taking These Actions?

These actions are proposed under sections 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(g), 11023(h) and 11048, and section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13106.

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using a listed toxic chemical in amounts above reporting threshold levels, to report their environmental releases of each chemical annually. 42 U.S.C. 11023(a). These reports must be filed by July 1 of each year for the previous calendar year. Facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA.

Section 313(g) describes the information that must be submitted annually to EPA, pursuant to EPCRA section 313. Specifically, section 313(g) requires submission of the following information for each listed toxic chemical known to be present at the facility: ''(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical; (ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year; (iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream; and (iv) The annual quantity of the toxic chemical entering each environmental medium.'' 42 U.S.C. 11023(g)(1).

Section 313(h) provides that the data collected under EPCRA section 313 are intended: to inform persons about the releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards, and for other similar purposes. 42 U.S.C. 11023(h). EPA has long recognized that subsection (h) of section 313 describes the purposes of EPCRA section 313, and has frequently

relied on this provision to guide its implementation. *See,* Conference Report at 299. ([Subsection (h)] ''describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section.''); 62 FR 23834; 23835–836 (May 1, 1997); 64 FR 58666; 58667; 58687–692 (October 29, 1999).

Section 6607(a) of the PPA requires all facilities that report under EPCRA section 313 to also submit ''a toxic chemical source reduction and recycling report for the preceding calendar year.'' 42 U.S.C. 13106(a) Specifically, section 6607 (b) requires submission of the following information for each listed toxic chemical: (1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year, and the percentage change from the previous year, excluding any amount reported under paragraph 7; (2) the amount of the chemical recycled (at the facility or elsewhere) during the calendar year, the percentage change from the previous year, and the process of recycling used; (3) the source reduction practices used during the year; (4) the amount expected to be reported under paragraphs (1) and (2) for the 2 succeeding calendar years; (5) a ratio of production in the reporting year to production in the previous year; (6) the techniques used to identify source reduction opportunities; (7) the amount of any toxic chemical released into the environment by a catastrophic event, remedial action or other one-time event, and which is not associated with production processes during the reporting year; and (8) the amount of the chemical treated (at the facility or elsewhere) during the calendar year and the percentage change from the previous year.

Congress granted EPA broad rulemaking authority. EPCRA section 328 provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter'' (28 U.S.C. 11048).

III. What Are TEQs and Why Did EPA Develop This Proposal?

A. What Are TEQs and How Are They Calculated?

TEQs are a weighted quantity measure based on the toxicity of each member of the dioxin and dioxin-like compounds category relative to the most toxic members of the category, *i.e.*, 2,3,7,8-tetrachlorodibenzo-p-dioxin (commonly referred to as dioxin) and 1,2,3,7,8-pentachlorodibenzo-p-dioxin. In order to calculate a TEQ, a toxic equivalent factor (TEF) is assigned to each member of the dioxin and dioxin-like compounds category, TEFs that have been established through international agreements currently range from 1 to 0.0001. A TEQ is calculated by multiplying the actual grams weight of each dioxin and dioxin-like compound by its corresponding TEF and then summing the results. The number that results from this calculation is referred to as grams TEQ.

B. Why Did EPA Develop This Proposed Rule?

In response to a petition, EPA added the dioxin and dioxin-like compounds category to the EPCRA section 313 list of toxic chemicals in October of 1999 (64 FR 58666 and 58695–58704 (October 29, 1999)). That rulemaking required reporting in grams of the total dioxin releases. The rationale for selection of that reporting format was articulated in the **Federal Register** (64 FR 58700–58704) and is not the subject of this rulemaking. However, in the 1999 rulemaking, EPA also agreed that ''* * * being able to determine TEQs from the reported data and being able to determine which of the *individual chemicals* are include (sic) in a facilities report would make the data more useful to the public.'' (64 FR 58702—emphasis added).

A significant factor in the belief that TEQ reporting could add value was that the TEFs upon which the TEQ computations are based are an internationally agreed upon standard for characterizing the relative toxicity of dioxin and dioxin-like compounds and were a significant factor in specifying the listing of some of the dioxin congeners (64 FR 58696). Therefore, EPA added a section to the Toxics Release Inventory (TRI) reporting Form R that required the reporting facility to provide a single distribution of the dioxin and dioxin-like compounds for one of the total quantities that the facility is reporting to enable interested members of the public to compute a general (not waste stream specific) TEQ for the facility's releases. Reporting of complete distributions for all waste streams was not required primarily due to a concern about reporting burden.

Under the current rule, if a facility has information on the distribution of the dioxin and dioxin-like compounds, it is required to report either the distribution that best represents the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution. As with all other reporting under EPCRA section 313, this information is only required if it is available from the data used to calculate thresholds, releases, and other waste management quantities, or if the facility has information that can be used to make a reasonable estimate. No additional testing or monitoring is required.

Since promulgation of the final rule, EPA has continued to receive feedback from the regulated community on the question of how to report under EPCRA section 313 for dioxin and dioxin-like compounds. For example, certain industry groups have recently requested that EPA require TEQ reporting for the dioxin and dioxin-like compounds category on an individual waste stream basis in addition to the current requirement to report total grams for the category. These groups believe the addition of information on TEQs for individual waste streams will enhance the value of dioxin release information without detracting from that already being provided. In addition, several industry trade associations including the American Chemistry Council, American Forest & Paper Association, American Portland Cement Alliance, Edison Electric Institute, and The Aluminum Association, have written to the Office of Management and Budget in support of the addition of TEQ reporting to the current EPCRA section 313 reporting requirements (Ref. 1). As was recognized at the time of the 1999 rulemaking, neither total mass nor TEQ reporting ''* * * provide all of the data that the commenters would like to have reported and that being able to determine TEQs would provide additional useful information.'' (64 FR 58702). Having so agreed, however, the Agency continues to have concerns about the burden which could be associated with waste stream specific reporting of dioxin releases and TEQ. In this proposed rule, EPA is soliciting comment on this burden for reporters if they were required to provide waste stream specific information on individual dioxins and dioxin-like compounds. The Agency is also seeking comment through this proposed rule on three potential approaches for implementing reporting changes which would make it feasible for the public to assess individual releases on both a gram and TEQ basis.

The Agency sees merit in this dual reporting for all of the reasons articulated in the 1999 rulemaking. Not only will the addition of TEQ reporting allow further understanding of the releases and waste management quantities currently reported to the TRI for dioxin and dioxin-like compounds, it will also make it easier to compare TRI data on dioxin and dioxin-like

compounds with other EPA activities which primarily present data for dioxin and dioxin-like compounds in terms of TEQs. Therefore, EPA has developed this proposed rule to solicit comments on potential approaches for ensuring the availability of TEQ based information in EPCRA section 313 reporting for the dioxin and dioxin-like compounds category.

IV. What Additional Data Is EPA Proposing To Collect and How Will It Be Collected?

There are three ways to accomplish the addition of TEQ information on individual waste streams to that data which is currently available under the TRI. In addition to the current reporting of the total grams of the dioxin and dioxin-like compounds category, one could also collect either TEQ data for the dioxin and dioxin-like compounds category as a whole, the total grams for the individual members of the dioxin and dioxin-like compounds category, or both, for each individual waste stream for which such data are available. Individual grams of each member of the category, combined with published TEFs, can be used either by the reporting facility or by EPA to calculate and report TEQ data for individual waste streams.

EPA is requesting comment on three options for collecting this information and providing it to the public. Under option 1, EPA would require that, in addition to reporting the total grams of the dioxin and dioxin-like compounds category, if a facility has information on the distribution of the quantities of the individual members of the dioxin and dioxin-like compounds, the facility must report the TEQ calculated from that distribution for the category. However, Option 1 is not an EPA preferred option because it does not address a major concern with the collection of TEQ data in the absence of individual grams data for each member of the category. The concern is that if TEFs change, as they have in the past, EPA will not be able to track TEQs consistently over time, because it will not have the underlying data necessary to recalculate prior year TEQ data using the new TEF values, or to otherwise compare TEQ data generated using different TEF values. The retention of outdated TEQ data in the publicly available TRI database could also cause additional confusion for users of the data.

Discussed below are the two preferred options (options 2 and 3) that EPA is considering for collecting this information. While EPA is considering all three options and specifically requests comments on which option would best meet the goal of providing useful TEQ data while limiting the additional reporting burden, EPA currently favors option 3 below, because it has the lowest burden and provides the most reliable information. (The regulatory text proposed in this notice, however, is based on option 2, because it incorporates both of the other two options, by requiring facilities to report individual grams data for each member of the category and to calculate and report TEQ values.)

A. Option 2: Facilities Report Both Grams Data and TEQ Data

Under this option, EPA is proposing that, in addition to reporting the total grams of the dioxin and dioxin-like compounds category, if a facility has information on the distribution of the quantities of the individual members of the dioxin and dioxin-like compounds, the facility must report (1) the total grams for each member of the category; and (2) the TEQ calculated from that distribution for the category. The TEQ data would be calculated using the most recent TEF values (see Unit V.). As with all other reporting under EPCRA section 313, facilities should use readily available data collected pursuant to other provisions of law to calculate this information, or where such data are not readily available, must make reasonable estimates of the amounts involved. See 42 U.S.C. 11042 (g)(2). Facilities are not required to conduct any testing or monitoring in order to submit this information. See 42 U.S.C. 11042 (g)(2). As EPA has previously stated, when reporting for the dioxin and dioxin-like compounds category, facilities should report their releases and other waste management quantities at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based (64 FR 58734, October 29, 1999).

Under any of the three options presented in this notice, the additional distribution data and TEQ data would be reported for the data elements in sections 5 (Quantity of the Toxic Chemical Entering Each Environmental Medium Onsite), 6 (Transfers of the Toxic Chemical in Wastes to Off-Site Locations), and 8 (Source Reduction and Recycling Activities; limited to the current year only data) of the current Form R. EPA intends to create a new form, called the Form R–D, that facilities will use instead of the Form R to report for the dioxin and dioxin-like compounds category, regardless of whether they can provide any of the additional data described in this proposal. The new form would include all of the data currently collected on the existing Form R (except for the information described in Unit VI), and would provide for the collection of the additional data for each waste stream required by the final rule (*i.e.*, mass distribution data for each member of the dioxin and dioxin-like compounds category under Option 3, the TEQs reported under Option 1, or both individual compound mass and TEQ data under Option 2). To help commenters understand precisely the additional information that EPA is proposing to collect, EPA has placed a draft copy of the Form R–D in the docket. However, the Agency is not proposing to codify this form, per se, and commenters will have the opportunity to comment on the form itself as part of OMB's Information Collection Request (ICR) clearance process (see Unit IX.B.).

EPA considered providing a supplemental form for reporting the additional grams and TEQ data, but determined that having only one form for all facilities to report for dioxin and dioxin-like compounds would greatly reduce the confusion that would result if two separate forms were required to be filled out. EPA also intends to incorporate the new Form R–D into the EPA-provided TRI-Made Easy (TRI–ME) electronic reporting software and to automate the calculation of the TEQ data so that facilities that report the gram quantities for the individual members of the category and use EPA's electronic reporting software will not have to calculate the TEQ value. Automation of the TEQ calculation is expected to both improve data quality and reduce reporting burden.

B. Option 3: Facilities Report Grams Data and EPA Calculates the TEQ Data

This option is the same as option 2 except that the only additional data facilities would need to provide is the individual grams data for each member of the dioxin and dioxin-like compounds category; facilities would not have to calculate and report the TEQ data. Under this option, EPA would generate the corresponding TEQ data from the individual grams data reported by the facility and include that TEQ data in the TRI database along with all the grams data reported by the facility. The TEQ data would be presented along with the facility-reported data and EPA would include TEQ data in all of EPA's publications that contain TRI data on dioxin and dioxin-like compounds. EPA would also include a TEQ calculator in TRI–ME so that facilities would still be able to check the TEQ calculations.

EPA believes that there are several benefits to this option. First, under this option facilities would not have the burden of tracking TEFs and calculating the TEQ data from the grams data; instead, this burden would be assumed by the Agency. Second, EPA would not have to incorporate the TEF values into the regulations, and therefore would not need to go through rulemaking in order to adopt any internationally accepted revisions (see Unit. V.). Third, if EPA does all the TEQ calculations electronically there should be fewer errors and improved data quality, both because there would be fewer opportunities for computational errors, and because there would be less potential for confusion about which were the applicable TEFs as these values change over time. Finally, if EPA calculates the TEQ data rather than having facilities report the data, EPA can recalculate the TEQ data for all of the reporting years once new TEF values are available. If facilities report the TEQ data themselves, EPA is concerned about its legal authority to alter these data if TEF values later change. Even though EPA and other users of the data could recalculate the TEQ data based on the individual grams data reported by the facilities, EPA might have to retain the original TEQ data reported by the facilities in the publicly available TRI database and this could cause additional confusion.

Because of the benefits discussed above, EPA believes that this option may be preferable to option 2. However, under this option the TEQ data would not come directly from the reporting facilities and, although EPA has every intention of providing the TEQ data, there would be no requirement for EPA to continue to provide TEQ data in the future. EPA requests comment on both options.

C. Electronic Reporting

EPA is also proposing to require that all Form R–D reports be filed electronically using EPA's TRI–ME electronic reporting software or other approved software. In order to capture the individual grams data for each member of the category the Form R–D will include many more data elements which will increase the possibility for errors when EPA has to transfer data to the TRI database from hard copy reports. EPA believes that it is very important that the additional data submitted on the Form R–D be accurately captured in the EPA database. Requiring all Form R–Ds to be submitted electronically will result in less preparation error and less processing errors than are associated with paper submissions. In addition, as EPA stated in a recent letter to TRI reporting facilities (see: *http://www.epa.gov/tri/TRI%20Re-Engineering%20Memo.pdf*), EPA has an ongoing effort to modernize and streamline the TRI program. One goal of the modernization effort is to process all reporting forms via the Internet utilizing EPA's Central Data Exchange (CDX). Requiring that all Form R–D reports be submitted electronically, which includes CDX or diskette, would be one small step toward the ultimate goal of full Internet reporting. EPA's preferred method of reporting is the use of TRI–ME and submitting through the Internet via CDX. CDX allows for a paperless filing, electronic signature, significant reduction of data errors, and instant confirmation of a facility's submission. For facilities wishing to submit through CDX, they must use the TRI–ME reporting software. EPA's other method of electronic filing is the use of diskette. Facilities should use TRI–ME, or other approved software, when submitting via a diskette.

EPA does not believe that there will be a significant increase in burden associated with requiring that all Form R–Ds be filed electronically (see Unit VII.). For example, in reporting year 2002 only 123 of the 1,277 reports filed for dioxin and dioxin-like compounds were submitted in hard copy thus over 90% of facilities that reported for dioxin and dioxin-like compounds filed electronically. Of the 123 hard copy submissions that were filed, 79 were prepared using EPA's TRI–ME electronic reporting software but were nevertheless submitted in hard copy. However, EPA requests comments on its proposal to have all Form R–D reports submitted electronically and whether EPA should create a waiver system that would allow facilities to file in hard copy. For example, EPA's Risk Management Plan program allows the submission of hard copies using a specific paper form and a paper submission cover form that explains why the facility is not filing electronically (see: *http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/RMPsubmission.htm*).

V. What TEF Values Does EPA Propose Be Used To Calculate the TEQ?

EPA is proposing to use the TEF scheme developed by the World Health Organization (WHO) in 1998 (Ref. 2) which is the most recent internationally agreed upon TEF scheme. The TEF values for the members of the dioxin and dioxin-like compounds category under the WHO 1998 scheme are assigned as follows (presented in the order of Chemical Abstracts Service (CAS) Number, chemical name, and TEF value): 67562–39–4, 1,2,3,4,6,7,8-heptachlorodibenzofuran, 0.01; 55673–89–7, 1,2,3,4,7,8,9-heptachlorodibenzofuran, 0.01; 35822–46–9, 1,2,3,4,6,7,8-heptachlorodibenzo-p-dioxin, 0.01; 70648–26–9, 1,2,3,4,7,8-hexachlorodibenzofuran, 0.1; 57117–44–9, 1,2,3,6,7,8-hexachlorodibenzofuran, 0.1; 72918–21–9, 1,2,3,7,8,9-hexachlorodibenzofuran, 0.1; 60851–34–5, 2,3,4,6,7,8-hexachlorodibenzofuran, 0.1; 39227–28–6, 1,2,3,4,7,8-hexachlorodibenzo-p-dioxin, 0.1; 57653–85–7, 1,2,3,6,7,8-hexachlorodibenzo-p-dioxin, 0.1; 19408–74–3, 1,2,3,7,8,9-hexachlorodibenzo-p-dioxin, 0.1; 39001–02–0, 1,2,3,4,6,7,8,9-octachlorodibenzofuran, 0.0001; 3268–87–9, 1,2,3,4,6,7,8,9-octachlorodibenzo-p-dioxin, 0.0001; 57117–41–6, 1,2,3,7,8-pentachlorodibenzofuran, 0.05; 57117–31–4, 2,3,4,7,8-pentachlorodibenzofuran, 0.5; 40321–76–4, 1,2,3,7,8-pentachlorodibenzo-p-dioxin, 1.0; 51207–31–9, 2,3,7,8-tetrachlorodibenzofuran, 0.1; 1746–01–6, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1.0.

EPA recognizes that over time, it may need to update the TEFs to reflect revisions adopted by the scientific community. For example, the WHO has initiated a project to review the current human and mammalian TEFs. The project will, as a first step, aim to update the database summarizing all published studies on the relative potency of dioxin and dioxin-like compounds. In a second step, an expert consultation will be held in the summer of 2005 to evaluate the need to update the human and mammalian TEF values as published in 1998. More information on this effort is available at *http://www.who.int/ipcs/assessment/tef_review/en/index.html.* Should the WHO revise its recommended TEFs, the Agency anticipates that it would revise the TEFs listed above to reflect the most recent scientific consensus. The TEF values would only be included in the final regulatory text if EPA finalizes one of the options (1 or 2) that requires industry to report TEQ data.

One possible advantage of options that require facilities to calculate and report the TEQ values is that, by including the TEFs in the regulations themselves, they would ensure an open, transparent process (*i.e.,* rulemaking) for changing the TEFs in response to new scientific information, including public notice and comment. However, even under the option where EPA calculates the TEQ values, the agency anticipates

that it would not change the TEFs used for TRI reporting without first explaining its rationale clearly to the public and providing opportunity for comment. EPA further anticipates that the TEFs used for TRI reporting would be kept consistent with those used across the agency for other programs, and that any change to the TEFs, whether through formal rule making or otherwise, would be done as part of a larger, agency-wide process.

VI. What Other Changes Is EPA Proposing To Make for the Reporting of Dioxin and Dioxin-Like Compounds?

Currently 40 CFR 372.85(b)(15)(ii) requires the reporting of a distribution of the chemicals included in the dioxin and dioxin-like compounds category. EPA requires the reporting of this distribution if the information is available from the data used to calculate thresholds, releases, and other waste management quantities for the dioxin and dioxin-like compounds category. However, since the new reporting form will provide for the reporting of the grams of the individual members of the category there would be no need to continue to collect the distribution data currently collected under section 1.4 of the Form R. Therefore, EPA is proposing to remove this reporting requirement and eliminate section 1.4 from the Form R.

VII. What Economic Considerations Are Associated With This Action?

EPA has evaluated the additional burden hours, cost, and potential benefits associated with the use of Form R–D instead of Form R for EPCRA section 313 reporting on the dioxin and dioxin-like compounds category. As part of this evaluation, EPA examined three options for obtaining more detailed information on dioxin and dioxin-like compounds on the Form R–D (Ref. 3). These options are (1) to require facilities to report the total grams TEQ of dioxin and dioxin-like compounds; (2) to require facilities to report the total grams TEQ of dioxin and dioxin-like compounds, as well as to report the mass in grams of each of the 17 individual members of the category; and (3) to require facilities to report the mass in grams of each of the 17 individual members of the category without reporting total grams TEQ. All three options entail changes to sections 5, 6, and 8 (current year only) of the existing Form R to create the Form R–D. In addition, EPA has estimated the additional cost of required electronic reporting for filing the Form R–D. This additional cost only applies to 89 facilities which filed a Form R for dioxin and dioxin-like compounds by submitting a paper form and did not use TRI–ME software to generate it. The total annual cost estimated for each option is the sum of the incremental cost for that option as described below and the additional cost of required electronic reporting for affected facilities.

In order to understand the incremental burden calculations below, it is important to first understand EPA's assumptions about the steps necessary to complete the current Form R for the dioxin and dioxin-like compounds category. EPA assumes that most reporting facilities already have data on the individual compounds that make up this category, since analytical tests generally report results for each compound. Facilities that rely on published emissions factors or other similar information will also often have data on the individual compounds, though in some cases published emissions factors may provide only a single value for the dioxin and dioxin-like compound category as a whole. However, in either case, facilities are required to use only the readily available data. EPA thus assumes that facilities either already have and are currently tracking data on the individual compounds contained in their waste streams (if this is the format of the underlying data on which their reporting is based), or that such data is not readily available, and will still not be readily available following promulgation of this rule. (EPA also recognizes the possibility that facilities may have a mix of data, with data for some waste streams including individual compounds and data for others including only total grams for the category as a whole.) As a result, EPA does not assume any additional burden for data tracking or for calculation of physical quantities of dioxin in individual waste streams. EPA requests comment on these assumptions.

Each option would entail some additional burden for each facility reporting for the dioxin and dioxin-like compounds category. In addition to the activities already conducted as part of the reporting process for Form R, a facility filing the Form R–D under Option 1 would also need to obtain the TEFs from the TRI reporting package for each of the 17 chemicals that comprise the category. Then the facility would multiply the grams released and/or transferred of each of the 17 chemicals in the category by the respective TEF to calculate that chemical's grams TEQ. Next the facility would sum the grams TEQ across the 17 chemicals to calculate the total grams TEQ released and/or transferred to be reported in sections 5, 6, and 8. For Option 2, the facility would also be required to report the mass in grams of each of the 17 chemicals that are subsequently multiplied by the TEFs in sections 5, 6, and 8 of Form R–D. Under Option 3, the facility would be required to report the mass in grams of each of the 17 chemicals in sections 5, 6, and 8 of Form R–D. The facility would not be required to obtain the TEF values or conduct additional multiplication and addition to calculate total grams TEQ. Under Option 3, it is envisioned that EPA would conduct the additional required calculations to derive total grams TEQ once the Form R–D is submitted.

For reporting year 2001, there were 1,315 facilities that filed Form Rs for the dioxin and dioxin-like compounds category (Ref. 3). Of these facilities, 70 percent (920 facilities) completed section 1.4 of the Form R containing distribution information on the members of the category. Since these 920 facilities indicated through their completion of section 1.4 that they have information on the distribution of the quantities of the individual members of the dioxin and dioxin-like compounds category, EPA expects that these facilities are most likely to incur additional burden and cost associated with form completion and record keeping for Form R–D in the first and subsequent reporting years. All 1,315 facilities are expected to experience additional burden and cost associated with rule familiarization in the first year of implementation.

In previous Information Collection Requests, EPA has estimated that, after the first year of reporting, facilities filing Form R typically spend 4 hours on compliance determination, 47.1 hours on form completion, and 5 hours on record keeping and report submission (Ref. 4). Because the Form R–D would create new reporting requirements beyond those for the Form R, EPA expects that affected facilities would experience additional burden and cost. EPA's estimates for the additional burden associated with rule familiarization, form completion, and record keeping for the three options are shown in the following table (Ref. 3).

ESTIMATED ADDITIONAL BURDEN OF FORM R–D PER REPORTING FACILITY

[In minutes]

	Rule familiarization	Form completion	Record-keeping	Total
First Year of Reporting				
Option 1	75	65	25	165
Option 2	75	85	25	185
Option 3	75	20	25	120
Subsequent Years of Reporting				
Option 1	0	65	25	90
Option 2	0	85	25	110
Option 3	0	20	25	45

Under all options, facilities would expend additional time in the first year to become familiar with the new reporting requirements associated with the Form R–D. Under all options, a major difference between burden in first and subsequent years is attributable to rule familiarization. Rule familiarization occurs in the first year of implementation but not in subsequent years.

All three Options require the same underlying level of recordkeeping. It is generally expected that facilities reporting any of the new information requested on Form R–D will be using information already in their possession. Form completion requirements differ between the three options, however. To understand the differences, it is important to know how TEQs are calculated for individual streams.

The basic computational steps for TEQ calculation are to take information on the quantities of the various compounds in each waste stream and multiply them by the TEFs to generate a value in total grams TEQ. Technical staff may employ any one of a number of methods to calculate grams TEQ ranging from hand calculations to the use of spreadsheets. These incremental burden estimates reflect an average burden associated with these different approaches. It is expected that some respondents will exceed the average estimated time of 45 minutes to complete these calculations. The Agency requests comment on whether its 45 minute estimate of TEQ calculation time is appropriate. Option 1 requires the facility to perform all calculations and provide the end result (*i.e.,* TEQ) on the Form R–D. Option 2 is expected to take approximately twenty minutes longer per facility than Option 1 because, although the same computation must be made, the facility must also record the intermediate values for the individual congener concentrations on the Form R–D. This twenty minutes arises from the time needed to record the mass in grams for each of the 17 chemicals in the category in sections 5, 6, and 8 of the Form R–D. This estimate assumes that the average facility will fill in three subsections within section 5, 6, and 8 (Ref. 3). Option 3 would require approximately 45 minutes less than Option 1 and 65 minutes less than Option 2 in both first and subsequent years because facilities would not be required to obtain the TEF values, or conduct any multiplication or addition to calculate total grams TEQ. Their only form completion effort will be the recording of the masses for the 17 chemicals on the Form R–D. EPA would perform the TEQ calculations and keep all records related to the TEFs. While an opportunity to comment on these time estimates will be provided with the proposal of the final ICR, EPA seeks comment on whether there are major gaps in these burden estimates.

Based on the number of facilities that filed reports on dioxin and dioxin-like compounds in 2001, the percentage that reported distribution information, and EPA's estimates of incremental burden, the total incremental burden of Option 1 would be 3,024 hours in the first reporting year and 1,380 hours in subsequent reporting years. The total incremental burden for Option 2 would be 3,327 hours in the first reporting year and 1,683 hours in subsequent reporting years. The total incremental burden for Option 3 would be 2,334 hours in the first reporting year and 690 hours in subsequent reporting years. Using these estimates and the average loaded hourly rates for managerial, technical, and clerical labor, the total incremental industry cost of Option 1 would be approximately $139,000 in the first reporting year and approximately $62,000 in subsequent reporting years. The total incremental industry cost for Option 2 would be approximately $154,000 in the first reporting year and approximately $76,000 in subsequent reporting years. The total incremental industry cost for Option 3 would be approximately $106,000 in the first reporting year and approximately $29,000 in subsequent reporting years. More detailed information on the derivation of these burden hour and cost estimates is available in the public docket for this action (Ref. 3).

Although Option 2 would create slightly more burden and cost for facilities that report on dioxin and dioxin-like compounds, EPA believes that Option 2 would result in greater net benefits than Option 1 by enhancing the utility of the data that are collected. The basic difference between Option 1 and Option 2 is that facilities must record the mass in grams values for each of the 17 chemicals in the reporting category on the Form R–D under Option 2. Provision of these mass in grams data will provide important information on which specific chemicals in the category are contributing most to the total toxicity as expressed in grams TEQ. Without these data, the user would be unable to determine to what extent the grams TEQ are related to dioxin and dioxin-like compounds of higher or lower relative toxicity as expressed by TEFs. These data will also allow the creation of valid time-series if TEFs are ever modified in the future as scientific understanding of the relative toxicity of the dioxin and dioxin-like compounds changes. In addition, provision of the mass in grams values will permit error checking of calculations for total grams TEQ that will enhance data quality. With Option 2, these goals would be attained at a total additional cost of approximately $14,000 to $15,000 per year. This cost may decline as more facilities use the automated routines in the TRI–ME reporting software. Although EPA has not quantified or

monetized the value of the net benefits, based on the reasoning described above EPA believes that the net benefits of Option 2 would be greater than the net benefits of Option 1. Option 3 would provide most or all of the same benefits as Option 2, but at a lower estimated burden to the reporting facilities. However, it should be noted that industry groups have specifically requested to report in terms of grams TEQ. Under Option 3, facilities would still be reporting in terms of mass for the members of the dioxin category, but in a format that will allow subsequent calculation of grams TEQ.

EPA expects to incur one-time costs for implementing reporting on the Form R–D. These costs are associated with production of guidance documents and training materials, modification of databases, and re-programming of automated reporting software. EPA's estimate of these one-time costs to allow reporting of individual gram quantities for each member of the dioxin and dioxin-like compounds category and for reporting in toxic equivalents is approximately $1.15 million. These costs are not expected to vary significantly across the three options (Ref. 5).

In addition to the incremental costs for each option, EPA has estimated the annual cost of required electronic reporting for submitting the Form R–D. Only 89 of 1,315 facilities that reported the Form R for dioxin and dioxin-like compounds are affected by this requirement. These 89 facilities submitted the Form R by paper and did not use either TRI–ME software or other approved software to generate their Form R. To meet the requirement that all Form R–D's be filed electronically, EPA modeled that potentially affected paper filers would need to purchase a computer. The annual computer cost annualized over a five year life is $183 (Ref. 3). The total annual computer cost for the 89 affected facilities is $16,280. Thus, the total annual first year and subsequent year cost for both the incremental burden of filing out Form R–D and required electronic reporting for each option is summarized in the following table (Ref 3).

Activity	First year cost	Subsequent year cost
Option 1		
Estimated Incremental Total	$139,315	$61,677
Computer Cost	16,280	16,280
Annual Total	155,595	77,957
Option 2		
Estimated Incremental Total	153,750	76,112
Computer Cost	16,280	16,280
Annual Total	170,030	92,392
Option 3		
Estimated Incremental Total	106,407	28,769
Computer Cost	16,280	16,280
Annual Total	122,687	45,049

EPA requests comments on its assessment of the costs of the addition of TEQ and individual grams reporting for the dioxin and dioxin-like compounds category. EPA is particularly interested in any options for reducing the burden that these new TEQ reporting requirements may have on small businesses. Of the estimated 481 affected parent companies which own reporting facilities, approximately 19 percent, or 92 companies, are small businesses as defined by the Small Business Administration.

VIII. References

1. American Chemistry Council, American Forest & Paper Association, American Portland Cement Alliance, Edison Electric Institute, and The Aluminum Association letter to John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Subject: Change to TRI Reporting of Dioxin, February 11, 2002.

2. Van den Berg, M.; Birnbaum, L.; Bosveld, A.T.C.; Brunstrom, B.; Cook, P.; Feeley, M.; Giesy, J.P.; Hanberg, A.; Hasegawa, R.; Kennedy, S.W.; Kubiak, T.; Larsen, J.C.; van Leeuwen, F.X.R.; Liem, A.K.D.; Nolt, C.; Peterson, R.E.; Poellinger, L.; Safe, S.; Schren, D.; Tillitt, D.; Tysklind, M.; Younes, M.; Warn, F.; Zacharewski, T. (1998) Toxic equivalency factors (TEFs) for PCBs, PCDDs, PCDFs for humans and wildlife. Environmental Health Perspectives. 106:775–792.

3. USEPA/OEI. Analysis of the Estimated Burden and Cost of the Form R–D for Dioxin and Dioxin-like Compounds; Toxic Equivalency Reporting; Community Right to Know Toxic Chemical Release Reporting, October 26, 2004.

4. USEPA/OEI. Estimates of Burden Hours for Economic Analyses of the Toxics Release Inventory, June 10, 2002.

5. USEPA/OEI. Memorandum Regarding TEQ Rulemaking Cost to the TRI Program from Daniel R. Bushman, Toxic Release Inventory Regulatory Development Branch, Toxic Release Inventory Program Division to Cody Rice, Analytical Support Branch, Environmental Analysis Division, October 16, 2002.

6. Memorandum Regarding Small Entity Impacts Associated with the Form R–D from Susan Day, *et al.* of Abt Associates Inc. to Cody Rice of USEPA/OEI, October 23, 2003.

IX. What Are the Statutory and Executive Order Reviews Associated With This Action?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''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. Based on EPA's cost estimates for this action, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2086.01). The information requirements are not effective until OMB approves them.

EPCRA section 313 (42 U.S.C. 11023) requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories in excess of the applicable threshold quantities, and meeting certain requirements (*i.e.,* at least 10 Full Time Employees or the equivalent), to report certain release and other waste management activities for such chemicals annually. Under PPA section 6607 (42 U.S.C. 13106), facilities must also provide information on recycling and other waste management data and source reduction activities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Under the rule, all facilities reporting to TRI on dioxin and dioxin-like compounds would have to use the EPA Toxic Chemical Release Inventory Form R–D (tentative EPA Form No. 9350–3).

For Form R–D, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) at 55.2 hours ($2,566) per response in the first reporting year and 53.9 hours ($2,507) in subsequent years for facilities with distribution data for the members of the category. For facilities without distribution data, the Form R–D is estimated to average 53.4 hours ($2,483) per response in the first reporting year and 52.1 hours ($2,424) in subsequent years. Note that these are total per facility burden and cost estimates for the Form R–D based on Option 2. (If a different option is selected, the total industry reporting burden will be more or less.) These per facility burdens and costs will be offset by burden and cost savings associated with no longer filing a Form R for the dioxin and dioxin-like compounds category. These estimates include the time needed to review instructions; search existing data sources and complete any necessary calculations; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility. The annual computer cost per facility associated with required electronic reporting annualized over a five year life is $183. The total annual computer cost for the 89 affected facilities is $16,280.

This rule is estimated to cause 1,315 facilities to file a Form R–D rather than a Form R. Based on Option 2, Form R–D reporting is associated with a total burden of approximately 72,000 hours in the first year, and 70,000 hours in subsequent years, at a total estimated industry cost of $3.34 million in the first year and $3.26 million in subsequent years. (If a different option is selected, the total industry reporting burden will be less.) Note that these are total burden and cost estimates for the Form R–D, and that these estimates will be offset by the burden and cost reduction associated with no longer filing a Form R for the dioxin and dioxin-like compounds category. The existing Form R ICR (EPA ICR No. 1363.12) will be amended to delete burden hours and costs associated with 1,315 Form Rs. The net increase in burden hours and cost is reflected in the discussion of economic considerations in Unit VII.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA has established a public docket for this ICR under Docket ID No. TRI–2002–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m.–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 Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.*

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to Docket ID No. TRI–2002–0001 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Include the EPA ICR number 2086.01 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 7, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by April 6, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a

city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule is expected to affect the 481 parent companies that own the 1,315 facilities that report on dioxin and dioxin-like compounds. Of the affected parent companies, approximately 19 percent, or 92 companies, are small businesses as defined by the Small Business Administration. Of the 92 small businesses affected by this rule, approximately 8 would be subject to both incremental burden costs from filling out the Form R–D and computer costs from required electronic reporting. No small governments or small organizations are expected to be affected by this action. Based on the option with the highest burden to reporting facilities (Option 2), each affected facility is expected to expend approximately 3.1 hours in the first year and 1.8 hours in subsequent years to comply with the additional reporting requirements. Based on the incremental cost estimates for these burden hours, the number of facilities owned by each small businesses, and the annual revenues of the affected small businesses, all 92 affected small businesses are expected to experience incremental cost impacts of less than one percent of annual revenues (Ref. 3 and Ref. 6).

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Based on EPA's cost estimate for this action, it has been determined that this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this rule from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this rule from tribal officials.

G. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed 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)) because it is not a significant regulatory action under Executive Order 12866.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, EPA identified no such standards. Consequently, EPA proposes to use the TEFs established by the WHO in 1998 (Ref. 2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 28, 2005.

Stephen L. Johnson,

Acting Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

Subpart B—[Amended]

2. In § 372.30, revise paragraph (a) to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350–1) or, for the dioxin and dioxin-like compounds category, EPA Form R–D (EPA Form 9350–3) in accordance with the instructions referred to in subpart E of this part.

* * * * *

Subpart E—[Amended]

3. In § 372.85, revise paragraphs (a), (b) introductory text, and (b)(15)(ii) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

(a) *Availability of reporting form and instructions and reporting method.* Information on how to obtain the most current version of EPA Form R (EPA Form 9350–1 and subsequent revisions), the EPA Form R–D (EPA Form 9350–3 and subsequent revisions), and the instructions for completing these forms can be found on EPA's Web site at *http://www.epa.gov/tri.* EPA encourages facilities subject to this part to submit the required information to EPA electronically via the Internet or by using magnetic media in lieu of hard copies of the Form R. Facilities that submit the Form R–D are required to file electronically using EPA's Toxics Release Inventory-Made Easy (TRI–ME) electronic reporting software or other approved software. Electronic reporting software and instructions for submitting via the Internet or on magnetic media may be obtained from the Web site provided in this paragraph.

(b) *Form elements.* Information elements reportable on EPA Form R, Form R–D, or equivalent magnetic media format include the following:

* * * * *

(15) * * *

(ii) Reporting for the dioxin and dioxin-like compounds category. All of the following must be reported and must be reported on the Form R–D:

(A) Report the total quantity of the category as a whole, in units of grams per year;

(B) Report the quantity of each member of the dioxin and dioxin-like compounds category in units of grams per year;

(C) Report toxic equivalency (TEQ) for the category, in units of grams TEQ per year. TEQs shall be calculated using the following toxic equivalent factors:

CAS No.	Chemical name	Toxic equivalent factor (TEF)
01746–01–6	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1.0
03268–87–9	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	0.0001
19408–74–3	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	0.1
35822–46–9	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	0.01
39001–02–0	1,2,3,4,6,7,8,9-Octachlorodibenzofuran	0.0001
39227–28–6	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	0.1
40321–76–4	1,2,3,7,8-Pentachlorodibenzo-p-dioxin	1.0
51207–31–9	2,3,7,8-Tetrachlorodibenzofuran	0.1
55673–89–7	1,2,3,4,7,8,9-Heptachlorodibenzofuran	0.01
57117–31–4	2,3,4,7,8-Pentachlorodibenzofuran	0.5
57117–41–6	1,2,3,7,8-Pentachlorodibenzofuran	0.05
57117–44–9	1,2,3,6,7,8-Hexachlorodibenzofuran	0.1
57653–85–7	1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	0.1
60851–34–5	2,3,4,6,7,8-Hexachlorodibenzofuran	0.1
67562–39–4	1,2,3,4,6,7,8-Heptachlorodibenzofuran	0.01
70648–26–9	1,2,3,4,7,8-Hexachlorodibenzofuran	0.1
72918–21–9	1,2,3,7,8,9–Hexachlorodibenzofuran	0.1

* * * * *

[FR Doc. 05–4339 Filed 3–4–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67, CG Docket No. 03–123; DA 05–339]

Federal Communications Commission Seeks Additional Comment on the Speed of Answer Requirement for Video Relay Service (VRS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comments requested.

SUMMARY: This document seeks public comment on a speed of answer requirement for the provision of Video Relay Service (VRS). The speed of answer requirement is currently waived as a mandatory minimum standard for VRS. The Federal Communications Commission (Commission) has reviewed the comments provided in response to the Further Notice of Proposed Rulemaking (*FNPRM*) contained in the *2004 TRS Report and Order,* and found that they lack specificity on certain elements of a speed of answer rule. In this document, the Commission is seeking additional comment on whether a speed of answer rule should be adopted for VRS and, if so, what the rule should be.

DATES: Interested parties may file comments in this proceeding on or before February 25, 2005. Reply comments may be filed on or before March 4, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05–339, released February 8, 2005. When filing comments, please reference CC Docket No. 98–67 and CG Docket No. 03–123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comment and reply comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments and reply comments by Internet e-mail. To get filing instructions, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204 Washington, DC 20554. Parties who choose to file by paper should also submit their comment and reply comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY–C417, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No 98–67 and CG Docket No. 03–123, type of pleading (comment and reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. The full text of this document and copies of any subsequently filed documents in this matter will be available for public 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. This document and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contract, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This public notice can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

On June 30, 2004, the Federal Communications Commission (Commission) released the *2004 TRS Report & Order,* which contained a Further Notice of Proposed Rulemaking (*FNPRM*) seeking comment on, among other things, a speed of answer

requirement for the provision of Video Relay Service (VRS). *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (*2004 TRS Report & Order*), CC Dockets 90–571 and 98–67 and CG Docket 03–123, FCC 04–137; published at 69 FR 53346 and 69 FR 53382, September 1, 2004. VRS is a form of telecommunications relay service (TRS) that allows persons with hearing and speech disabilities to communicate with the TRS communications assistants (CA) in video through sign language, rather than typed text. The term telecommunications relay service means ''telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communications by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio.'' 47 U.S.C. 225 (a)(3); *see generally 2004 TRS Report & Order* at paragraph 3 n.18. The Commission reviewed comments provided in response to the *FNPRM,* and found that they lacked specificity on certain elements of a speed of answer rule. Therefore, the Commission is seeking additional comment on whether a speed of answer rule should be adopted for VRS, and the following specific points:

(1) What should the speed of answer time be for VRS calls? What percentage of VRS calls should be required to be answered within that period of time?

(2) When should a particular speed of answer rule be effective? Should VRS speed of answer standards be phased in over time? If so, how should the standards be phased in (*i.e.,* what standards should apply at what points in time)?

(3) What should be the starting and ending points for measuring speed of answer? We note, for example, that in the *IP Declaratory Ruling,* we stated that for IP Relay ''we will consider the call delivered to the IP Relay center when the IP Relay center's equipment accepts the call from the Internet.'' *See Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling and Second Further Notice of Proposed Rulemaking (*IP Declaratory Ruling*), CC Docket 98–67, FCC 02–121; published at 67 FR 39863 and 67 FR 39929, June 11, 2002. The Commission seeks comment on how we should articulate the starting period from which speed of answer can be measured for each call so that all providers are measuring speed of answer in the same manner.

(4) How should ''abandoned'' calls be treated in determining a provider's compliance with a speed of answer standard? The Commission notes that the TRS regulations presently require that abandoned calls be included in the speed of answer calculation. *See* 47 CFR 64.604 (b)(2)(ii)(B); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Further Notice of Proposed Rulemaking, (*Improved TRS Order*), CC Docket 98–67, FCC 00–56; published at 65 FR 38432 and 65 FR 38490, June 21, 2000 (addressing abandoned calls and explaining that such calls are those calls answered by a relay center, but never handled by a CA because the customer hangs up). Should the same rule apply to VRS and abandoned calls? If not, what other rule should apply to the treatment of abandoned calls?

(5) How should ''call backs''—*i.e.,* calls where the consumer elects to have the provider call the consumer back when a VRS CA becomes available to place the call, rather than have the consumer wait for the next available CA—be treated in the speed of answer calculation? *See Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May not be Used as a Video Remote Interpreting Service,* Public Notice, CC Docket No. 98–67, CG Docket No. 03–123; DA 05–141 at 4 & n.16 (January 26, 2005) (addressing certain kinds of ''call back'' arrangements). Should, for example, such ''call backs'' be treated as abandoned calls? Should such ''call backs'' be prohibited once a speed of answer rule is adopted for VRS?

(6) Should a provider's compliance with a speed of answer rule be measured on a daily or monthly basis? (The current speed of answer rule applicable to the other forms of TRS provides that compliance with the speed of answer rule shall be measured on a daily basis.) *See* 47 CFR 64.604 (b)(2)(ii)(C). Or should it be measured on some other basis?

(7) In connection with the adoption of a speed of answer requirement for VRS, should providers be required to submit reports to the Commission detailing call data reflecting their compliance with the speed of answer rule, and if so, how frequently should such reports be filed (*e.g.,* monthly, quarterly or semi-annually)?

We also seek comment on any other issues relating to the possible adoption of a speed of answer rule for VRS.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–4347 Filed 3–4–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 030105E]

RIN 0648–AS16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the South Atlantic Region; Amendment 6

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

ACTION: Notice of availability of Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP); request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 6 to the FMP for review, approval, and implementation by NMFS. Amendment 6 would modify the FMP's bycatch reduction device (BRD) framework by transferring authority from the Council to NMFS for the BRD testing protocol and by modifying the bycatch reduction criteria established in the BRD framework; require the use of BRDs in the rock shrimp fishery in the exclusive economic zone (EEZ) of the South Atlantic; establish bycatch reporting requirements for the shrimp fishery of the South Atlantic EEZ; require that all shrimp vessels harvesting penaeid shrimp in the South Atlantic EEZ obtain an annually renewable Federal shrimp vessel permit from NMFS; and establish or modify stock status criteria for white, brown, pink, and rock shrimp. The intended effect of Amendment 6 is to enhance the ecological efficiency of the shrimp fishery of the South Atlantic EEZ by better identifying the bycatch taken in the fishery and conserving those species found in the bycatch, while sustaining the viability of the shrimp fishery with

a minimum of economic and social impacts.

DATES: Written comments must be received no later than 5 p.m., eastern time, on May 6, 2005.

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

- E-mail: *0648–AS16.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS16–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: From March 7, 2005 through March 17, 2005, 727–570–5583. From March 22, 2005 through May 6, 2005, 727–824–5308. Comments cannot be received via fax from March 18 through March 21, 2005.

Copies of Amendment 6, which includes a Supplemental Environmental Impact Statement, a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), are available from the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366; fax: 843–769–4520; toll free: 866–SAFMC–10; email: *safmc@samfc.net*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax 727–570–5583; 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 6, if implemented, would establish a requirement for penaeid shrimp vessels fishing in the South Atlantic EEZ to possess a Federal commercial vessel permit for South Atlantic penaeid shrimp. Currently, there are limited data available to estimate the number of shrimp fishing vessels and fishing effort expended by those vessels in the South Atlantic EEZ. In proposing this action, the Council concluded that information collected via a Federal permit system would aid in the formulation of sound management measures. Indirectly, in combination with the proposed standardized bycatch reporting methodology (see below), better information can be collected by which to manage those species that are taken as bycatch in the shrimp fishery.

Amendment 6 contains proposed measures to require vessels participating in the rock shrimp fishery in the South Atlantic EEZ to use NMFS-certified BRDs. This action would address the requirements of National Standard 9 of the Magnuson-Stevens Act to (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch, to the extent practicable. The proposed action also supports the Council's efforts to achieve an ecosystem approach in fisheries management.

Amendment 6, if implemented, also would establish a method to regularly monitor, report, and estimate the bycatch in the shrimp fishery of the South Atlantic region, in compliance with section 303(a)(11) of the Magnuson-Stevens Act. Section 303(a)(11) states that any FMP that is prepared by any Council, or by the Secretary of Commerce, with respect to any fishery, shall ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery....'' To support this mandate, the National Standard Guidelines call for development of a database for each fishery in order to house bycatch and bycatch mortality information. The Council proposes to adopt the Atlantic Coastal Cooperative Statistics Program Release, Discard, and Protected Species Module to house bycatch and bycatch mortality information. Until this module is fully implemented and active, the Council proposes to use a variety of sources to assess and monitor bycatch including observer coverage and logbooks aboard Federally permitted commercial shrimp vessels, state cooperative data collection, and grant funded projects.

Amendment 6 proposes to modify the BRD framework procedure, as established in the Shrimp FMP, giving NMFS the authority to maintain and modify the BRD Testing Protocol as necessary. The BRD framework was established in Amendment 2 to the Shrimp FMP and outlines the procedures by which an experimental BRD is to be tested for its ability to reduce bycatch in a shrimp trawl. The intent of this action is to reduce the administrative burden associated with potential revisions of the BRD Testing Protocol and to achieve more timely implementation of any such revisions.

Relatedly, to more effectively address bycatch reduction, the Council is proposing to adjust the criteria for the certification of new BRDs established in the BRD framework. Amendment 2's BRD framework established criteria by which experimental BRDs would be certified for use in the South Atlantic penaeid shrimp fishery. Currently, a BRD is certified if the BRD can be statistically demonstrated to reduce bycatch mortality of juvenile Spanish mackerel and weakfish by a minimum of 50 percent or if it demonstrates a 40–percent reduction in numbers of Spanish mackerel and weakfish. When these criteria were established, both species were considered overfished. Spanish mackerel now is completely recovered, and weakfish is no longer overfished. In addition, sampling for these species has proved to be impractical because it is difficult to encounter Spanish mackerel and weakfish simultaneously while testing BRDs.

To better address the requirements of National Standard 9, the Council is proposing to change the certification criteria to a general finfish reduction requirement. The Council is proposing that for a new BRD to be certified for use in the shrimp fishery, it must be statistically demonstrated that the BRD can reduce the total weight of finfish catch by at least 30 percent. This broader bycatch reduction objective would support the Council's efforts to achieve an ecosystem approach in fisheries management.

Finally, to better comply with the Magnuson-Stevens Act requirements, the Council is proposing to establish or modify the current stock status criteria established for white, brown, pink, and rock 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. In the Council's 1998 comprehensive amendment to the FMP that addressed SFA definitions, the Council concluded

its established definitions were consistent with the best available scientific information at the time. Based on more recent information, the Council is proposing to either modify existing criteria or to establish new criteria.

A proposed rule that would implement measures outlined in Amendment 6 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 May 6, 2005, 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: March 2, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4375 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 030105D]

RIN 0648–AS53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic; Amendment 15

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

ACTION: Notice of availability of Amendment 15 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic (FMP); request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 15 to the FMP for review, approval, and implementation by NMFS. Amendment 15 would establish a limited access system for the commercial fishery for Gulf and Atlantic group king mackerel, and change the fishing year for Atlantic migratory groups of king and Spanish mackerel to March 1 through February 28–29. The intended effect of Amendment 15 is to support the Council's efforts to achieve optimum yield in the fishery, and provide social and economic benefits associated with maintaining stability in the fishery.

DATES: Written comments must be received no later than 5 p.m., eastern time, on May 6, 2005.

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

- E-mail: *0648–AS53.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS53–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: From March 7, 2005 through March 17, 2005, 727–570–5583. From March 22, 2005 through May 6, 2005, 727–824–5308. Comments cannot be received via fax from March 18 through March 21, 2005.

Copies of Amendment 15, which includes an Environmental Assessment, a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), are available from the Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619–2272; email: *gulfcouncil@gulfcouncil.org*; or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; e-mail: *safmc@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax 727–570–5583; e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the FMP. The FMP was prepared by the Councils and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 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 15, if implemented, would establish a limited access system for the commercial fishery for Gulf and Atlantic group king mackerel. A commercial king mackerel vessel permit moratorium was established by Amendment 8 to the FMP in March 1998, and Amendment 12 extended the expiration date of the moratorium through October 15, 2005, or until the moratorium could be replaced with a license limitation, limited access, and/or individual fishing quota (IFQ) or individual transferable quota (ITQ) system, whichever occurred earlier. The intended effect of the moratorium was to prevent increases in effort, to possibly reduce the number of permittees in the king mackerel fishery, and to stabilize the economic performance of current participants, while protecting king mackerel from overfishing. The existing restricted number of fishery participants, especially in the Gulf of Mexico, has demonstrated the capability of harvesting their total allowable catch (TAC) well in advance of the end of the various fishing seasons. Allowing the fishery to revert to open access would probably hasten these closures. The proposed limited access system would maintain the existing restricted access to the fishery for an indefinite period, with the intent to provide continued social and economic stability to the king mackerel fishery.

Amendment 15 contains a second action, which, if implemented, would change the fishing year for Atlantic migratory groups of king and Spanish mackerel to March 1 through February 28–29. The current fishing year for Atlantic migratory groups of both king and Spanish mackerel extends from April 1 through March 31. Under the existing fishing year, the commercial quota for Atlantic group king mackerel has only been met three times. However, should TAC need to be reduced in the future, there is a potential for the commercial quota to be met, and the fishery would be closed by the end of the season (i.e., in March). A March closure could adversely affect the social and economic stability of South Atlantic fisheries due to other commercial closures for alternative target species

during that same month. For example, the red porgy fishery is closed January through April, and the gag and black grouper fishery is closed in March and April. By changing the opening date of the season to March 1, the Councils reduce the possibility of multiple commercial fishery closures at the same time.

A proposed rule that would implement measures outlined in Amendment 15 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 May 6, 2005, whether specifically directed to the FMP 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: March 2, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4377 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 43
Monday, March 7, 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

March 1, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office, of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Summary of Collection: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 stat. 3178, 7 U.S.C. 6941 *et seq.*) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act (RE Act) of 1936. The RE Act authorize and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. RUS will collect information including studies and reports to support borrower loan applications.

Need and Use of the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification and evaluate the success of RUS program activities.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 801.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 65,717.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4289 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program Redemption Certificate, Form, FNS–278B; Food Stamp Program Wholesaler Redemption Certificate, Form FNS–278–4

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a currently approved collection of the Food Stamp Program for which approval expires on February 28, 2005. The Food Stamp Act of 1977, as amended, requires that the Food and Nutrition Service will provide all authorized retail food stores and wholesale food concerns with redemption certificates. The redemption certificates are to be used by all authorized retailers and wholesale firms to present food coupons to insured financial institutions for credit or for cash. Requirements in the Food Stamp Program regulations are the basis for the information collected on Form FNS–278B, Food Stamp Redemption Certificate and Form FNS–278–4, Wholesaler Redemption Certificate.

The Food and Nutrition Service is rapidly phasing out the use of paper food coupons. Currently, 99.9 percent of all food stamp benefits are issued electronically. Forty-eight States, the District of Columbia, the Virgin Islands, Guam, and Puerto Rico have online operating Electronic Benefit Transfer (EBT) systems. Two States operate offline food stamp EBT systems and issue paper food coupons to recipients who move out of State and have remaining food stamp benefits. Many States have already closed out their coupon inventory completely and more will be doing the same in the upcoming year. Approximately 438,955 Redemption Certificates were processed by retailers and wholesalers in Fiscal Year 2004, and the number continues to decline due to 100 percent EBT

implementation. Until all of the paper food coupons issued are redeemed, the Redemption Certificate will remain an essential document to the food stamp redemption process.

DATES: Written comments must be received on or before May 6, 2005 to be assured of consideration.

ADDRESSES: Send comments to: Andrea Gordon, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Andrea Gordon at (703) 305–1863 or via e-mail to: *brdhq-web@fns.usda.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 404.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Andrea Gordon, (703) 305–2456.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Redemption Certificate.

OMB Number: 0584–0085.

Form Number: FNS–278B and FNS–278–4.

Expiration Date: February 28, 2005.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal Agency responsible for the Food Stamp Program (FSP). Section 10 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2019) requires that FNS provide for the redemption, through financial institutions, of food coupons accepted by retail food stores and wholesale food concerns from program participants. 7 CFR 278.3 and 7 CFR 278.4 of the FSP regulations governs the participation of authorized wholesale food concerns and retail stores in the food coupon redemption process. Form FNS–278B, Food Stamp Redemption Certificate and Form FNS–278–4, Wholesaler Redemption Certificates (RCs) are required to be used by all authorized wholesalers or retailers, and are processed by financial institutions when they are presented for cash or credit. Without the RCs, no vehicle would exist for financial institutions, Federal Reserve Banks, and FNS to track deposits of food coupons.

The burden associated with this form is derived from the numbers of RCs processed annually, based on information available in our Store Tracking and Redemption System database. As of September 2004, the number of program respondents was 152,499 retailers and wholesalers and 5,850 banks participating in the FSP. The number of completed RC responses by authorized retailers was 438,955 annually. We estimate that it takes an average of 1.2 minutes (or .020 hours) for a retailer to complete the information on the RC and for the financial institution to handle and process the document.

For this information collection package, we calculated the burden hours from each year, added them together (2005–2007) and divided by three to obtain the average burden for which we are seeking OMB approval. We estimate the average burden hours for the next three years to be 69.501 hours.

The burden for each of the three fiscal years (FYs) are estimated as follows:

In FY 2005, we estimate the number of program respondents will be 7,624 respondents with 5,850 banks continuing to participate in the FSP—a reduction of 144,874 (or 95 percent) respondents. We also estimate that the number of completed RC responses by authorized retailers to be 8,779.1 annually—providing for a reduction of 430,175.9 (or 95 percent) annual responses, and a total burden hours calculated to be 175.582 hours.

In FY 2006, we estimate the number of program respondents will be 2,668.73 respondents with 5,850 banks continuing to participate in the FSP—a reduction of 4,956.22 (or 65 percent) respondents. We also estimate that the number of completed RC responses by authorized retailers to be 1,316.86 annually—providing for a reduction of 7,462.23 (or 85 percent) annual responses, and a total burden hours calculated to be 26.337 hours.

In FY 2007, we estimate the number of program respondents will be 667.18 respondents with 5,850 banks continuing to participate in the FSP—a reduction of 2,001.55 (or 75 percent) respondents. We also estimate that the number of completed RC responses by authorized retailers to be 329.217 annually—providing for a reduction of 987.66 (or 75 percent) annual responses, and a total burden hours calculated to be 6.584 hours.

The estimated reduction of respondents and annual burden hours is based on a projected decrease in the number of authorized retailers participating in the FSP, and a decrease in the number of RCs processed as a result of fewer authorized retailers accepting paper food coupons due to FNS phasing out the use of paper food coupons.

Respondents: Businesses, wholesale food concerns, or other not-for-profit financial institutions.

Estimated Average Number of Respondents: 3,653.62.

Estimated Annual Number of Responses per Respondent: 0.951.

Estimated Total Average Annual Responses: 3,475.062.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .020 hours per response.

Estimated Total Average Annual Burden: 69.501 hours.

Dated: March 1, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–4298 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

2005 Forest Land Recovery Program

AGENCY: Forest Service, USDA.

ACTION: Notice of program implementation.

SUMMARY: The Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Pub. L. 108–324) makes $10,000,000 available to the Secretary of Agriculture to provide assistance to eligible nonindustrial private forest landowners who suffered losses during 2004, as a result of hurricane, tropical

storm, or related events for the purposes of debris removal, replanting of timber, and other related purposes. The USDA Forest Service will administer this program, in partnerhsip with State forestry agencies in the States of Alabama and Florida, where signicant loss and damage to forest resources has occurred.

DATES: Assistance will be made available to eligible landowners from March 2005 until such time as all funds are expended.

ADDRESSES: Information about the Forest Land Recovery Program can be obtained by writing to the USDA Forest Service, Cooperative Forestry Staff headquarters located at 1400 Independence Avenue, SW., Washington, DC 20250–1123.

FOR FURTHER INFORMATION CONTACT: Karl R. Dalla Rosa, Cooperative Forestry Staff, (202) 205–6206.

SUPPLEMENTARY INFORMATION:

National Program Administration

All program funds will be adminsitered by the Chief of the Forest Serivce through the Forest Service Regional Forester, in partnership with State forestry agencies in the States of Alabama and Florida, where significant damage and loss to private forest resources has occurred. The State Foresters shall use all program funds to provide cost-share assistance to non-industrial private forest landowners in their States, who suffered losses to hurricanes and tropical storms during the 2004 hurricane season. All funds will be accounted for in accordance with Federal financial accounting standards. The Chief has final authority to resolve all issues that may arise in the adminsitraton of these funds.

State Program Administration

The State Foresters shall make all program funds available, as cost-share assistance to eligible landowners as follows:

1. For the purposes of site preparation (including debris removal), planting and other purposes related to the restoration of damaged or lost forest resources.

2. Following the preparation of a management or practice plan that identifies the needed practices, specifications, and performance period for the implementation of the practice(s) to achieve the forest restoration objectives of the landowner.

3. As reimbursements for practices completed on a 75% cost-share basis.

4. Consistent with appropriate per acre cost-share rate maximums for eligible practices, as established by the State Foresters, through this or existing cost-share programs.

5. No single landowner shall receive more than $75,000 total in cost-share assistance.

6. No single landowner shall receive assistance for the treatment of more than 1000 acres of forestland.

Landowner Eligibility Requirements for Cost-Share Assistance

A landowner is eligible for program assistance if all of the following requirements are met:

1. The landowner is an individual, group, association, corporation, Indian Tribe, or other legal private entity owning not more than 5,000 acres of timber producing forest land (or a person who has received concurrence from the landowner for practice implementation and who holds a lease on the land for a minimum of 10 years). Corporations whose stocks are publicly traded or owners principally engaged in the primary processing of raw wood products are excluded.

2. The landowner owns forest land in either Florida or Alabama, where significant forest resource loss or damage has occurred as a result of one or more hurricane or tropical storm during the 2004 hurricane season. The landowner has not received, nor will receive cost-share assistance from the USDA Farm Service Agency under Public Law 108–324, Section 101(c), the Tree Assistance Program.

Recapture of Cost-Share Assistance

Payments made to landowners may be recaptured under one or more of the following circumstances:

1. If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from this program. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of this program. Financial assistance payments shall be withheld or a refund of all or part of any cost-share payments otherwise due or paid to that person shall be secured.

2. If any landowner or successor takes any action or fails to take action, which results in the destruction or impairment of a prescribed practice for the duration of the practice. Cost-share payments shall be withheld or a recapture of all or part of any cost-share payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.

3. If it is determined that the landowner has also received assistance from the USDA Farm Service Agency under H.R. 4837, Section 101(c)(2), the Tree Assistance Program.

Landowner Application Information

Eligible landowners are may apply for program assistance at their local office of the Florida Division of Forestry or the Alabama Forestry Commission.

Dated: February 25, 2005.

Sally Collins,

Associate Chief.

[FR Doc. 05–4322 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals are due by March 7, 2005 to be considered at this meeting.

DATES: The meeting will be held March 18, 2005 from 6–9 p.m. and will continue on March 19, 2005 from 9–12 a.m., if necessary.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 7, 2005 will

have the opportunity to address the Council at those sessions.

Dated: February 28, 2005.

Patricia M. O'Connor,

District Ranger, Yakutat Ranger District, Tongass National Forest.

[FR Doc. 05–4304 Filed 3–4–05; 8:45 am]

BILLING CODE 3401–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently approved information collection in support of the program for ''Rural Development Loan Servicing.''

DATES: Comments on this notice must be received by May 6, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Mel Padgett, Rural Business-Cooperative Service, USDA, Stop 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone: (202) 720–1495.

SUPPLEMENTARY INFORMATION:

Title: Rural Development Loan Servicing.

OMB Number: 0570–0015.

Expiration Date of Approval: June 30, 2005.

Type of Request: Extension of a currently approved information collection.

Abstract: This regulation is for servicing and liquidating loans made by the RBS, under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. This regulation is also for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR part 1076. The objective of the IRP is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by RBS to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to require information from ultimate recipients. The information requested is vital to RBS for prudent loan servicing, credit decisions and reasonable program monitoring. The provisions of this subpart supersede conflicting provisions of any other subpart.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated number of Respondents: 420.

Estimated number of responses per respondent: 10.

Estimated total annual burden on respondents: 11,235 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 23, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–4309 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Value-Added Producer Grant Application Deadlines and Funding Levels

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $14.3 million in competitive grant funds for fiscal year (FY) 2005 to help independent agricultural producers enter into value-added activities. RBS hereby requests proposals from eligible independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures interested in a competitively-awarded grant to fund one of the following two activities: (1) Planning activities needed to establish a viable value-added marketing opportunity for an agricultural product (*e.g.* conduct a feasibility study, develop a business plan, develop a marketing plan); or (2) acquire working capital to operate a value-added business venture that will allow producers to better compete in domestic and international markets. In order to provide program benefits to as many eligible applicants as possible, applications can only be for one or the other of these two activities, but not both. The maximum award per grant is $100,000 for planning grants and $150,000 for working capital grants and matching funds are required.

DATES: You may submit completed applications for grants on paper or electronically by 4 p.m. Eastern time on May 6, 2005.

ADDRESSES: You may obtain application guides and materials for a Value-Added Producer Grant at the following Internet address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or by contacting the Agency Contact for your state listed in Section VII of this notice.

Submit final paper applications via the postal service for a grant to Cooperative Services, Attn: VAPG Program, Mail Stop 3250, 1400 Independence Ave., SW., Washington, DC 20250–3250. Submit final paper applications via UPS or Federal Express for a grant to Cooperative Services, Attn: VAPG Program, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic grant applications using *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: The Agency Contact for your state is listed in Section VII of this notice or visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* The program Web site contains application guidance, including a Frequently Asked Questions section and an application outline.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates: Application Deadline: Final applications must be received on or before 4 p.m. Eastern time on May 6, 2005. Draft applications must be received by 4 p.m. local time on April 22, 2005.

I. Funding Opportunity Description

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants (VAPG). The Secretary of Agriculture has delegated the program's administration to USDA's Rural Business-Cooperative Service.

The primary objective of this grant program is to help eligible independent producers of agricultural commodities, agricultural producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures develop strategies to create marketing opportunities and to help develop business plans for viable marketing opportunities. Eligible agricultural producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures must limit their proposals to emerging markets. These grants will facilitate greater participation in emerging markets and new markets for value-added products. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable. No more than 10 percent of program funds can go to applicants that are majority-controlled producer-based business ventures.

Definitions

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Producer—Persons or entities, including farmers, ranchers, loggers, agricultural harvesters and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which Value-Added is to accrue as a result of the project. Examples of agricultural producers include: A logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and other seafood products.

Applicant—An entity or individual applying for a VAPG that has a unique Employer Identification Number (EIN).

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, increased value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Emerging Market—A new or developing market for the applicant, which the applicant has not traditionally supplied.

Farm—Any place from which $1,000 or more of agricultural products (crops and livestock) were sold or normally would have been sold during the year under consideration.

Farmer or Rancher Cooperative—A farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, individuals or entities (including for profit and not for profit corporations (excluding Farmer or Rancher Cooperatives), LLCs, partnerships or LLPs), where the entities are solely owned or controlled by Agricultural Producers who own a majority ownership interest in the agricultural product that is produced. An independent producer can also be a steering committee composed of independent producers in the process of organizing an association to operate a Value-Added venture that will be owned and controlled by the independent producers supplying the agricultural product to the market. Independent Producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers.

Majority-Controlled Producer-Based Business Venture—A venture where more than 50% of the ownership and control is held by Independent Producers, or, partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers.

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Matching funds must be at least equal to the grant amount. In-kind contributions that conform to the provisions of 7 CFR 3015.50 and 7 CFR 3019.23, as applicable, can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced,

not less than an equal amount of matching funds shall have been funded prior to submitting the request for reimbursement. Matching funds are subject to the same use restrictions as grant funds. Funds used for an ineligible purpose will not be considered matching funds.

National Office—USDA RBS headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Planning Grants—Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential Value-Added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

Rural and rural area—Includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in most states.

Total Project Cost—The sum of the amount of requested VAPG funds and the proposed matching funds.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of:

(1) A change in its physical state,

(2) Differentiated production or marketing, as demonstrated in a business plan, or

(3) Product segregation. Also,

(4) The economic benefit realized from the production of farm or ranch-based renewable energy.

Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

Working Capital Grants—Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $14.3 million.

Approximate Number of Awards: 117.

Approximate Average Award: $125,000.

Floor of Award Range: None.

Ceiling of Award Range: $100,000 for planning grants and $150,000 for working capital grants.

Anticipated Award Date: September 30, 2005.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be an independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as defined in the ''Definitions'' section of this notice. If the applicant is an unincorporated group (steering committee), it must form a legal entity before the grant period can begin.

B. Cost Sharing or Matching

Matching funds are required. Applicants must verify in their applications that matching funds are available for the time period of the grant. Matching funds must be at least equal to the amount of grant funds requested. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds. Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources if they are in-kind contributions.

C. Other Eligibility Requirements

- Product Eligibility: The project proposed must involve a Value-Added product as defined in the ''Definitions'' section of this notice. Applicants should note that a project falling under the second definition of Value-Added must already have a business plan in place at the time of application. The applicant must reference this business plan in the application. Because of this requirement, it is unlikely that projects falling under the second definition of Value-Added will be eligible to apply for a planning grant. In order to be eligible under the farm or ranch-based renewable energy category, the project must include energy generated on-farm through the use of agricultural commodities, wind power, water power or solar power.
- Activity Eligibility: The project proposed must specify whether grant funds are requested for planning activities or for working capital. Applicants may not request funds for both types of activities in one application. Applications requesting funds for both planning activities and for working capital will not be considered for funding. Applicants other than independent producers applying for a working capital grant must demonstrate that the venture has not been in operation more than two years at the time of application.
- Grant Period Eligibility: Applications that have a timeframe of more than 365 days will be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after December 31, 2006, will not be considered for funding.
- Applications without sufficient information to determine eligibility will not be considered for funding.
- Applications that are non-responsive to the submission requirements detailed in Section IV of this notice will not be considered for funding.

• Applications that are missing any required elements (in whole or in part) will not be considered for funding.

• Applicants may submit more than one application, but in the event that more than one application for any applicant scores high enough to be funded, only the highest ranking application will be funded.

• Applicants who have already received a planning grant for the proposed project shall not receive another planning grant for the same project. Applicants who have already received a working capital grant for a project shall not receive any additional grants for that project. Applicants may receive a planning grant for a project in one funding cycle and receive a working capital grant for the same project in a subsequent funding cycle. Please note that the Agency penalizes an applicant who is applying for a planning grant when it has already received a planning grant or who is applying for a working capital grant when it has already received a working capital grant by deducting ten points from the applicant's score under criterion 10.

• Applicants may also receive one grant in any given funding year and be eligible to receive another grant in a subsequent funding year, subject to the above restrictions.

• If an applicant currently has a VAPG, the grant period for that grant must be scheduled to expire by December 31, 2005.

IV. Application and Submission Information

A. Address to Request Application Package: If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at the following Internet address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the representative listed for your state from the list in the ''Agency Contacts'' in Section VII. Application forms can be mailed to you. If you plan to apply electronically, you must visit *http://www.grants.gov* to obtain the correct forms.

B. Content and Form of Submission: You may submit your application in paper or in an electronic format. To view an application outline, please visit the program Web site at: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*. If you submit your application in paper form, you must submit a signed original and one copy of your complete application. The application must be in the following format:

• Font size: 12 point unreduced.

• Paper size: 8.5 by 11 inches.

• Page margin size: 1 inch on the top, bottom, left, and right.

• Printed on only one side of each page.

• Held together only by rubber bands or metal or plastic clips; not bound in any other way.

• Language: English, avoid jargon.

• The submission must include all pages of the application.

• It is recommended that the application is in black and white, and not color. All paper applications will be scanned electronically for further review upon receipt by the Agency and the scanned images will all be in black and white. Those evaluating the application will only receive black and white images.

If you submit your application electronically, you must follow the instructions given at the Internet address: *http://www.grants.gov*. Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF–424, ''Application for Federal Assistance.'' In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's DUNS number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number, the start and end dates of the project, the federal funds requested, other funds that will be used as matching funds, an answer to the question, ''Is applicant delinquent on any federal debt?'', the name and signature of an authorized representative (if the signature is of anyone other than a stated owner of the proposed venture, the application should include a signed statement by either the owner(s) of the entity or the governing board stating that the signature is made by an authorized person), the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant from RBS. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call (866) 705–5711. For more information, see the VAPG Web site at: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or contact the program representative in your state from the list in Section VII.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both federal and matching funds.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' In order for this form to be considered complete, the form must be signed by an authorized official (if the signature is of anyone other than a stated owner of the proposed venture, the application should include a signed statement by either the owner(s) of the entity or the governing body stating that the signature is made by an authorized person) and include the title, name of applicant, and date submitted.

4. Survey on Ensuring Equal Opportunity for Applicants. Submission of this form is voluntary for non-profit applicants only. For-profit applicants should not submit this form.

5. Title Page. The Title Page should include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

6. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents (TOC) immediately following the Title Page. The TOC should include page numbers for each component of the proposal. Pagination should begin immediately following the TOC. In order for this element to be considered complete, the TOC should include page numbers for the Executive Summary, an Eligibility Discussion, the Proposal Narrative and its subcomponents (Project Title, Information Sheet, Goals of the Project, Work Plan, Performance Evaluation Criteria and Proposal Evaluation Criteria), Verification of Matching Funds and Certification of Matching Funds.

7. Executive Summary. A summary of the proposal, not to exceed one page, should briefly describe the project, including goals, tasks to be completed and other relevant information that provides a general overview of the project. In this section the applicant

must clearly state whether the proposal is for a planning grant or a working capital grant and the amount requested. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

8. Eligibility Discussion. A detailed discussion, not to exceed four (4) pages, describing how the applicant, project, and purpose meet the eligibility requirements. In the event that more than 4 pages are submitted, only the first 4 pages will be considered.

The applicant must first describe how it meets the definition of an independent producer, agricultural producer group, farmer or rancher cooperative, or a majority-controlled producer-based business venture as defined in the ''Definitions'' section of this funding announcement. The applicant must apply as only one type of applicant.

If the applicant is an independent producer, the proposal must demonstrate that the owners of the business applying own and produce more than 50 percent of the raw commodity that will be used for the value-added product. The applicant must also demonstrate that the product is owned by the producers from its raw commodity state through the production of the value-added product.

If the applicant is an agricultural producer group, it must identify the independent producers on whose behalf the work will be done. These producers must own and produce the commodity to which value will be added. Note that applicants tentatively selected for a grant award must verify that the work will be done on behalf of the Independent Producers identified in the application.

If the applicant is a farmer or rancher cooperative, the applicant must reference the business' standing as a cooperative in its state of incorporation. The applicant must also explain how the cooperative is 100 percent owned and controlled by Independent Producers. If a cooperative is not 100 percent owned and controlled by Independent Producers, it may still be eligible to apply as a Majority-Controlled Producer-Based Business Venture, provided it meets the definition in Section I. If the applicant is applying on behalf of only a portion of its membership, that portion must be identified. Note that applicants tentatively selected for a grant award must verify that the work will be done on behalf of the Independent Producers identified in the application.

If the applicant is a majority-controlled producer-based business venture, the proposal must state the percentage of the venture owned by independent producers, or partnerships, LLCs, LLPs, corporations or cooperatives that are themselves 100 percent owned and controlled by Independent Producers (eligible producers). The percentage must be calculated by dividing the ownership interest of the eligible producers by the ownership interest of all owners. These eligible producers must own and produce the commodity to which value will be added. The applicant must also demonstrate that eligible producers have majority control over the business. Majority control must be demonstrated through voting rights on the governing body of the business venture. The majority of voting rights must belong to eligible producers who own and produce the commodity to which value will be added.

In addition, the applicant must describe all organizations that are involved in the project.

The applicant must next describe how the value-added product to be produced meets the definition of ''Value-Added'' as defined in the ''Definitions'' section of this funding announcement.

If the product meets the first definition, the application must explain the change in physical state or form of the product.

If the product meets the second definition, the proposal must explain how the production or marketing of the commodity enhances the value-added product's value. The enhancement of value should be quantified by using a comparison with value-added products produced or marketed in the standard manner. Also, a business plan that has been developed for the applicant for the project must be referenced.

If the product meets the third definition, the proposal must explain how the physical segregation of a commodity or product enhances its value. The enhancement of value should be quantified, if possible, by using a comparison with commodities marketed without segregation.

If the product meets the fourth definition, the proposal must explain how the renewable energy will be generated on a farm or ranch.

Finally, the applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the project activities must be planning activities or working capital activities, but not both. Second, the activities must be directly related to the processing and/or marketing of a value-added product. Agricultural production activities are not eligible for funding.

If the grant request is for planning activities, working capital expenses are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a planning activities application is for working capital expenses, the entire application will be determined to be ineligible and will not be considered for funding. If 20 percent or less of the total project cost for a planning activities application is for working capital expenses, the application may still be considered for funding, but any subsequent award will only be for eligible project expenses.

If the grant request is for working capital, planning activities are not eligible for funding. If more than 20 percent of the total project cost (both grant and matching funds) for a working capital application is for planning activities, the entire application will be determined to be ineligible and will not be considered for funding. If 20 percent or less of the total project cost for a working capital application is for planning activities, the application may still be considered for funding, but any subsequent award will only be for eligible project expenses.

If the applicant has already received a planning grant for a project, it is only eligible to apply for a working capital grant. If an applicant has already received a working capital grant for a project, it is not eligible to apply for any further grants for that project.

An applicant may not receive more than one grant in any one funding cycle. An applicant may submit multiple applications, but if more than one application scores high enough to be funded, only the highest ranked application will be funded.

9. Proposal Narrative. The narrative, not to exceed 35 pages (Times New Roman, 12 point font, 1 inch margins) must include the following information. In the event that more than 35 pages are submitted, only the first 35 pages submitted will be considered.

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The Project Title does not need to appear on a separate page. It can be included on the Title Page and/or on the Information Sheet.

ii. Information Sheet. A separate one page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. Goals of the Project. A clear statement of the ultimate goals of the project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the agricultural producer(s).

iv. Work Plan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what time frame the activity will take place, and the cost of the activity. Please note that one of the Proposal Evaluation Criteria evaluates the Work Plan and Budget. Applicants should only submit the Work Plan and Budget once, either as Section IV.B.9. or as part of the Work Plan/Budget evaluation criterion discussion.

v. Working capital applications must also include three (3) years of pro forma financial statements, including an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. The financial statements will not count as part of the 35 page limit for the narrative section of the proposal.

vi. Performance Evaluation Criteria. The applicant must suggest criteria by which the project should be evaluated in the event that a grant is awarded. These suggested criteria are not binding on USDA. Please note that these criteria are different from the Proposal Evaluation Criteria and are a separate requirement. Failure to submit at least one performance criterion by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

vii. Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form. Failure to address the appropriate evaluation criteria (planning grant proposals must address planning grant evaluation criteria and working capital grant proposals must address working capital grant evaluation criteria) by the application deadline will result in a determination of incomplete and the proposal will not be considered for funding.

10. Conflict of Interest Disclosure. If the applicant plans to conduct business with any family members, company owners, or other identities of interest using grant or matching funds, the nature of the business to be conducted and the nature of the relationship between the applicant and the identity of interest must be disclosed. Examples include in-kind matching funds donated by the applicant's immediate family and contracting with someone who has a financial interest in the venture for services paid by grant or matching funds.

11. Certification of Judgment or Debt Owed to the United States. Applicants must certify that they are not delinquent on a debt owned to the United States and that the United States has not obtained a judgment against them. No grant funds shall be used to pay a judgment or delinquent debt owed to the United States.

12. Verification of Matching Funds. Applicants must provide a budget to support the work plan showing all sources and uses of funds during the project period. Applicants will be required to verify matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If matching funds are to be provided by the applicant in cash, a copy of a bank statement with an ending date within 30 days of the application deadline is required. The bank statement must show an ending balance equal to or greater than the amount of cash matching funds proposed. If the matching funds will be provided through a loan or line of credit, the applicant must include a statement from the lending institution verifying the amount available, the time period of availability of the funds, and the purposes for which funds may be used. If the matching funds are to be provided by an in-kind contribution from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification for funds donated outside the proposed time period of the grant will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification for in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this grant program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this grant program. The matching funds must be spent or donated during the grant period and the funds must be expended at a rate equal to or greater than the rate grant funds are expended. Some examples of acceptable uses for matching funds are: skilled labor performing work required for the proposed project, office supplies, and purchasing inventory. Some examples of unacceptable uses of matching funds are: land, fixed equipment, buildings, and vehicles.

Expected program income may not be used to fulfill the matching funds requirement at the time of application. If program income is earned during the time period of the grant, it may be used to replace other sources of matching funds if prior approval is received from the Agency. Any program income earned during the grant period is subject to the requirements of 7 CFR 3019.24.

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will be determined to be incomplete and will not be considered for funding.

13. Certification of Matching Funds. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of

matching funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the Verification of Matching Funds requirement. Applicants should include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

C. Submission Dates and Times

Application Deadline Date: May 6, 2005. Drafts must be received by April 22, 2005.

Explanation of Deadlines: Final applications must be received by 4 p.m. Eastern Time on the deadline date (see Section IV.F. for the address). If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If your application does not meet the deadline above, it will not be considered for funding. You will be notified that your application did not meet the submission deadline. You will also be notified by mail or by e-mail if your application is received on time.

Draft applications may be submitted to an applicant's respective state office (Section VII) by 4 p.m. local time on April 22, 2005. Draft applications may be submitted in paper form or electronically. They may be hand-delivered or faxed at the discretion of the state office. Applicants are not required to submit a draft application, but may choose to do so. Draft applications will be reviewed by the state office for completeness only, and the Agency's official determination will not be made until the official application is received. Drafts submitted after April 22, 2005 may be reviewed for completeness at the discretion of the state office. More information regarding this process can be viewed in Section V.

D. Intergovernmental Review of Applications

Executive Order 12372 does apply to this program.

E. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. They include, but are not limited to, the following:

1. Funds may only be used for planning activities or working capital for projects focusing on processing and marketing a value-added product.

Examples of acceptable planning activities include to:

i. Obtain legal advice and assistance related to the proposed venture;

ii. Conduct a feasibility analysis of a proposed value-added venture to help determine the potential marketing success of the venture;

iii. Develop a business plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed venture; and

iv. Develop a marketing plan for the proposed value-added product, including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns.

Examples of acceptable working capital uses include to:

v. Design or purchase an accounting system for the proposed venture;

vi. Pay for salaries, utilities, and rental of office space;

vii. Purchase inventory, office equipment (*e.g.* computers, printers, copiers, scanners), and office supplies (*e.g.* paper, pens, file folders); and

viii. Conduct a marketing campaign for the proposed value-added product.

2. No funds made available under this solicitation shall be used to:

i. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

ii. Purchase, rent, or install fixed equipment, including processing equipment;

iii. Purchase vehicles, including boats;

iv. Pay for the preparation of the grant application;

v. Pay expenses not directly related to the funded venture;

vi. Fund political or lobbying activities;

vii. Fund any activities prohibited by 7 CFR parts 3015 and 3019;

viii. Fund architectural or engineering design work for a specific physical facility;

ix. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility; or

x. Fund research and development.

xi. Purchase land.

F. Other Submission Requirements

You may submit your final application via the postal service for a grant to Cooperative Services, Attn: VAPG Program, Mail Stop 3250, 1400 Independence Ave., SW., Washington, DC 20250–3250. Submit final paper applications via UPS or Federal Express for a grant to Cooperative Services, Attn: VAPG Program, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your final application electronically using the following internet address: *http://www.grants.gov*. Final applications may not be submitted by facsimile or by hand-delivery. Each final application submission must contain all required documents in one envelope, if by mail or express delivery service.

V. Application Review Information

A. Criteria: All eligible and complete applications will be evaluated based on the following criteria. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. If you believe a criterion is not applicable, you must state that in your application. Applications for planning grants have different criteria to address than applications for working capital grants. Addressing the incorrect set of criteria will result in a determination of incomplete and the application will not be considered for funding. The total points available for each set of criteria is 98.

1. Criteria for applications for Planning Grants are:

i. Nature of the proposed venture (0–25 points). Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. The discussion for this criterion must include the agricultural commodity to which value will be added, the process by which value will be added, and a description of the value-added product produced. If the applicant has the information available, the discussion for this criterion should include references to independent, third-party information that the applicant has reviewed, a discussion of similar projects, cost and availability of inputs, the type of market where the value-added product will be marketed (*e.g.* local, regional, national, international) and the potential number

of customers, the cost of processing the commodity, how much value will be added to the raw commodity through the production of the value-added product, how the added value will be distributed among the producers, processors, and any other intermediaries, and any additional non-monetary value that could be obtained by end-users of the product. Points will be awarded based on the greatest expansion of markets and increased returns to producers. Applications that do not discuss a specific commodity, process, and value-added product will receive the minimum points allowed. Two teams of technical experts will be appointed to evaluate this criterion: a team of three independent reviewers and the servicing state office (see Section V.A.1.ii. for more details). The independent reviewers will evaluate this criterion from a national and/or regional perspective, and the servicing state office will evaluate this criterion from a state perspective.

ii. Qualifications of those doing work (0–10 points). Proposals will be reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do the studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well. If staff or consultants have not been selected at the time of application, the application should include specific descriptions of the qualifications required for the positions to be filled. Also, rather than attaching resumes at the end of the application, it is preferred that the qualifications of the personnel and consultants are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

iii. Project leadership (0–10 points). The leadership abilities of individuals who are proposing the venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts. Also, rather than attaching resumes at the end of the application, it is preferred that the leadership abilities are discussed directly within the response to this criterion. If resumes are included, they should be contained within the narrative section of the application within the response to this criterion. If resumes are attached at the end of the application, those pages will be counted toward the page limit for the narrative.

iv. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in kind support as well as technical assistance. Letters of support should not be included with the application. If they are submitted, they will not be considered for the purpose of evaluating this criterion. Also, letters demonstrating end-user commitments should not be submitted. If they are submitted, they will not be considered for the purpose of evaluating this criterion. The applicant should reference all support groups and commitments in the discussion of this criterion, and have the support letters and commitment letters available upon request. These support and commitment letters are not the same as the documentation required as part of the verification of matching funds requirement. All documentation needed to properly verify matching funds must be submitted with the application in a separate section.

v. Work plan/Budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed planning task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the planning activities. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Budgets that include more than 10% of total project costs that are ineligible will result in a determination of ineligible and the application will not be considered for funding. However, if an application with ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the grant award will be reduced accordingly. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

vi. Amount requested (0–1 points). One (1) point will be awarded for grant requests of $50,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

vii. Project cost per owner-producer (0–2 points). This is calculated by dividing the amount of Federal funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$25,000 equals 2 points, $25,001–$50,000 equals 1 point, $50,001–$100,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer- and rancher-cooperatives, and majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value will be added as part of this project. For agricultural producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a venture, each family member shall count as one owner-producer.

Applications without enough information to determine the number of producer-owners will be determined to be incomplete and will not be considered for funding. Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. Community and industry support (0–10 points). Applicants must submit a description of the local business associations, industry associations, and any political institutions that support their projects. Letters of support should not be submitted, but a description of each letter of support should be included. The description must include the following: the name of the supporting organization, the date of the letter of support, and the name of the person signing the letter. The applicant should also include a brief description of why the support of each group is valuable to the project. National

Congressional support will not be considered for the purpose of evaluating this criterion. Applicants must be able to present a letter of support for each group listed at the time of award. Failure to demonstrate the support claimed in the application shall result in withdrawal of the grant award. Ventures that only demonstrate one type of support will not score as high for this criterion as ventures that demonstrate multiple types of support.

ix. Business size (10 points if the application meets the criterion or 0 points if the application does not meet the criterion). Applicants must demonstrate their amount of gross sales for their most recent complete fiscal year. Applicants that have less than $100 million in gross sales will receive 10 points. Applicants that have $100 million or more in gross sales will receive 0 points. For this criterion, applicants should simply state the amount of gross sales for their most recent fiscal year. If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Applicants that do not have a complete fiscal year should so state in their applications. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

x. Number of grants (0 points if the application meets the criterion or −10 points if the application does not meet the criterion). Applicants must indicate whether they have received any previous grants under the VAPG program since its inception in 2001. Applicants who have already received a planning grant will receive −10 points. Applicants who have not received a planning grant will receive 0 points.

xi. Presidential initiative of bio-energy (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants must indicate whether they believe their project has a bio-energy component. Those applications that have at least 51% of project costs dedicated to planning activities for a bio-energy project will receive 5 points. Partial credit will not be given.

Applicants should note that the energy must be produced primarily (*i.e.* more than 50 percent) for on-farm use, unless the energy produced qualifies as a value-added product in its own right (*e.g.* ethanol, bio-diesel). Also, the energy must be produced from a bio-based source. Examples of qualifying bio-energy projects include ethanol, bio-diesel, and energy produced from a manure digester. On-farm wind energy, on-farm solar energy, and on-farm hydro energy do not qualify for points under this criterion, even though they are eligible projects for this program. Biomass projects such as producing compost from manure and producing mulch from trees also do not qualify for points under this criterion, although they are eligible projects for this program.

xii. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 11 criteria). The Administrator of the Rural Business-Cooperative Service may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

2. Criteria for working capital applications are:

i. Business viability (0–25 points). Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the venture and the efficiency of operations. The discussion for this criterion must include the agricultural commodity to which value will be added, the process by which value will be added, and a description of the value-added product produced. The application should also include references to independent, third-party information that the applicant has reviewed, a discussion of similar projects, cost and availability of inputs, the type of market where the value-added product will be marketed (*e.g.* local, regional, national, international) and the potential number of customers, the cost of processing the commodity, how much value will be added to the raw commodity through the production of the value-added product, how the added value will be distributed among the producers, processors, and any other intermediaries, and any additional non-monetary value that could be obtained by end-users of the product. The application must also reference the feasibility study and business plan that has been developed for the project. The feasibility study must have been completed by an independent third party. The business plan may have been completed by the applicant, but should have included third party consultation in its development. The applicant should also discuss the financial statements submitted to assist in the demonstration of economic feasibility and sustainability. Points will be awarded based on how well the project is described, the feasibility of the project, the greatest expansion of markets, and increased returns to producers. Applications that do not discuss a specific commodity, process, and value-added product will receive the minimum points allowed. Failure to reference both a third-party feasibility study and a business plan by the application deadline will result in a determination that the application is incomplete and it will not be considered for funding. Applicants are reminded that they must produce the feasibility study and business plan referenced at the time of notification of grant award. Failure to produce both documents will result in withdrawal of the grant award. Also, the feasibility study and business plan are subject to Agency approval. If the feasibility study and business plan do not meet the Agency's approval, the grant award will be withdrawn. Two teams of technical experts will be appointed to evaluate this criterion: a team of three independent reviewers and the servicing state office (see Section V.A.1.ii. for more details). The independent reviewers will evaluate this criterion from a national and/or regional perspective, and the servicing state office will evaluate this criterion from a state perspective.

ii. Customer base/increased returns (0–10 points). Proposals that demonstrate strong growth in a market or customer base and greater Value-Added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns. Describe in detail how the customer base for the product being produced will expand because of the value-added venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the venture. Applicants should also reference the financial statements submitted. More points will be awarded to those applications that demonstrate the greatest expansion of the customer base and increased returns to producers.

iii. Commitments and support (0–10 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature and level and quality of their contributions. End user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in-

kind support as well as technical assistance. Do not submit specific contracts, letters of intent, or other supporting documents at this time. However, be sure to cite their existence when addressing this criterion. These documents will be requested at the time of grant award. Failure to produce them shall result in the withdrawal of the grant award. Points will be awarded based on the greatest level of documented commitment.

iv. Management team/work force (0–10 points). The education and capabilities of project managers and those who will operate the venture must reflect the skills and experience necessary to effect project success. The availability and quality of the labor force needed to operate the venture will also be evaluated. Applicants must provide the information necessary to make these determinations. Proposals that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

v. Work plan/Budget (0–10 points). The work plan will be reviewed to determine whether it provides specific and detailed task descriptions that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the proposed activities. The budget must present a detailed breakdown of all estimated costs associated with the venture's operations and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine whether or not funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. Budgets that include more than 10% of total project costs that are ineligible will result in a determination of ineligible and the application will not be considered for funding. However, if an application with ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the grant award will be reduced accordingly. Applications without a work plan and detailed budget submitted by the application deadline will be determined to be incomplete and will not be considered for funding. Logical, realistic, and economically efficient work plans and budgets will result in higher scores.

vi. Amount requested (0–1 points). One (1) point will be awarded for grant requests of $75,000 or less. In addressing this criterion, the applicant should simply state the amount requested.

vii. Project cost per owner-producer (0–2 points). This ratio is calculated by dividing the amount of VAPG funds requested by the total number of producers that are owners of the venture. The allocation of points for this criterion shall be as follows: $1–$50,000 equals 2 points, $50,001–$100,000 equals 1 point, and $100,001–$150,000 equals 0 points. The applicant must state the number of owner-producers that are part of the venture. For independent producers, farmer- and rancher-cooperatives, and majority-controlled producer-based business ventures, the applicant must state the number of owners of the venture that are independent producers and are also owners of the venture. An owner cannot be considered an independent producer unless he/she is a producer of the agricultural commodity to which value will be added as part of this project. For agricultural producer groups, the number used should be the number of producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a venture, each family member shall count as one owner-producer. Applications without enough information to determine the number of producer-owners will be determined to be incomplete and will not be considered for funding. Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. Community and industry support (0–10 points). Applicants must submit a description of the local business associations, industry associations, and any political institutions that support their projects. Letters of support should not be submitted, but a description of each letter of support should be included. The description must include the following: the name of the supporting organization, the date of the letter of support, and the name of the person signing the letter. The applicant should also include a brief description of why the support of each group is valuable to the project. National Congressional support will not be considered for the purpose of evaluating this criterion. Applicants must be able to present a letter of support for each group listed at the time of award. Failure to demonstrate the support claimed in the application shall result in withdrawal of the grant award. Ventures that only demonstrate one type of support will not score as high for this criterion as ventures that demonstrate multiple types of support.

ix. Business size (10 points if the application meets the criterion or 0 points if the application does meet the criterion). Applicants must demonstrate their amount of gross sales for their most recent complete fiscal year. Applicants that have less than $100 million in gross sales will receive 10 points. Applicants that have $100 million or more in gross sales will receive 0 points. For this criterion, applicants should simply state the amount of gross sales for their most recent fiscal year. If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Applicants that do not have a complete fiscal year should state so state in their applications. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

x. Number of grants (0 points if the application meets the criterion or −10 points if the application does not meet the criterion). Applicants must indicate whether they have received any previous grants under the VAPG program since its inception in 2001. Applicants who have already received a working capital grant will receive −10 points. Applicants who have not received a working capital grant will receive 0 points.

xi. Presidential initiative of bio-energy (0 points if application does not meet the criterion or 5 points if application does meet the criterion). Applicants must indicate whether they believe their project has a bio-energy component. Those applications that have at least 51% of project costs dedicated to working capital for a bio-energy project will receive 5 points. Partial credit will not be given. Applicants should note that the energy must be produced primarily (*i.e.* more than 50 percent) for on-farm use, unless the energy produced qualifies as a value-added product in its own right (*e.g.* ethanol, bio-diesel). Also, the energy must be produced from a bio-based source. Examples of qualifying bio-energy projects include ethanol, bio-diesel, and energy produced from a manure digester. On-farm wind energy, on-farm solar energy, and on-farm hydro energy do not qualify for points under this criterion, even though they are eligible projects for this program. Bio-mass projects such as producing compost from manure and producing mulch from trees also do not qualify for points under this criterion, although they are eligible projects for this program.

xii. Administrator points (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 11 criteria). The Administrator of RBS may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

B. Review and Selection Process: Applicants may choose to submit a draft application to their respective state offices (contact information is listed at the end of this notice). This draft will be reviewed by the state office for completeness only, in accordance with a standardized checklist. Applicants submitting a draft application that is received by April 22, 2005 will have a completed checklist for their draft returned to them by 4 p.m. local time on May 2, 2005. Applicants may submit draft applications after the April 22, 2005 deadline at the discretion of their state office; however, no guarantee is made regarding whether the state office will complete its completeness review of the draft and return the checklist to the applicant in sufficient time for the applicant to use the information to revise its application and submit it on time. Final applications still need to be sent to the Washington, DC (Section IV.F.) address by the application deadline or submitted electronically through the Internet address: *http://www.grants.gov*. Draft applications will not be accepted in lieu of a final application. Applicants who choose not to submit a draft application will not be penalized during the application review and selection process.

Each final application will be assigned to a particular Rural Development State Office, based on the address of the applicant or the location of the project. This state will be known as the servicing State Office. For example, if an applicant has an address in Kansas, the application will be assigned to the Rural Development State Office in Kansas and the Kansas State Office will be the servicing State Office. Applications will then be initially reviewed by Rural Development field office personnel from the servicing State Office for completeness and eligibility. Ineligible and incomplete applications will not be further evaluated and will not be considered for funding.

All eligible and complete proposals will be evaluated by three reviewers based on criteria one through five described in section V.1. (with criteria one receiving 0–10 points for this portion of the review process). One of these reviewers will be a Rural Development employee not from the servicing State Office and the other two reviewers will be non-Federal persons. All reviewers must meet the following qualifications. Reviewers must have obtained at least a bachelors degree in one or more of the following fields: agri-business, business, economics, finance, or marketing. They must also have a minimum of three years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). If the reviewer does not have a degree in one of those fields, he/she must possess at least five years of working experience in an agriculture-related field.

Once the scores for criteria one through five have been completed by the three reviewers, the scores will be normalized, using an accepted statistical procedure. This procedure corrects for any reviewer tendencies to score applications ''high'' or ''low.'' After the normalization is complete, the three scores will be averaged to obtain an initial ranking. Then, the high and low scores for each application will be analyzed for statistically significant deviation. For those applications with significant deviation, the ranking of that application with respect to all other scored applications will be considered. In cases where the ranking indicates that the application could either move out of funding range or into funding range, two supplemental reviews will be conducted by Rural Development employees not from the state where the application was assigned. These reviews will be normalized and compared with the initial three scores. The high and low scores from all five reviews will then be discarded. Each application will then be assigned a score that is the normalized average of three scores based on criteria one through five. The score will be converted to a value that can be added to the servicing State Office score (see below).

Concurrent to the evaluation based on criteria one through five, the application will also receive one score from the Rural Development servicing State Office based on criteria one and six through eleven (with criteria one receiving 0–15 points for this portion of the review process). The State Office may enlist the support of qualified technical experts, approved by the State Director, to assist the State Office scoring process. The score will be added to the average normalized converted score obtained from criteria one through five.

Finally, the Administrator of RBS will award any Administrator points based on criteria twelve. These points will be added to the cumulative score for criteria one through eleven. A final ranking will be obtained based solely on the scores received for criteria one through twelve. Applications will be funded in rank order until appropriated funds are expended. After the award selections are made, all applicants will be notified of the status of their applications by mail. No information regarding the status of an application will be released until after the award selections are made. Awardees must meet all statutory and regulatory program requirements in order to receive their award. Applicants for working capital grants must submit complete, independent third-party feasibility studies and business plans before the grant award can be finalized. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 30, 2005.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284.

To view these regulations, please see the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional requirements apply to grantees selected for this program:

- Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

• Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''

• Form RD 400–1, ''Equal Opportunity Agreement.''

• Form RD 400–4, ''Assurance Agreement.''

• RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''

Additional information on these requirements can be found on the RBS Web site at the following Internet address: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*.

Reporting Requirements: You must provide Rural Development with a hard copy original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed for your assigned state in Section VII. Failure to submit satisfactory reports on time may result in suspension or termination of your grant. RBS is currently developing an online reporting system. Once the system is developed, you may be required to submit some or all of your reports online instead of in hard copy.

1. Form SF–269 or SF–269A. A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (1) of this section. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent. Planning grant projects must also report the estimated increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by continuing the project into its operational phase. Working capital grants must report the increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by the project during the grant period. Projects with significant energy components must also report expected or actual capacity (*e.g.* gallons of ethanol produced annually, megawatt hours produced annually) and any emissions reductions incurred during the project.

3. Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the Representative listed for the state in which the applicant is based. If you are unable to contact the Representative for your state, please contact a Representative from a nearby state or you may contact the RBS National Office at Mail Stop 3250, 1400 Independence Avenue SW., Washington, DC 20250–3250, Telephone: (202) 720–7558, e-mail: *cpgrants@usda.gov*.

Alabama

Mary Ann Clayton, USDA Rural Development, Sterling Center, Ste. 601, 4121 Carmichael Rd., Montgomery, AL 36106–3683, (334) 279–3624, *mary.clayton@al.usda.gov*.

Alaska

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VIII. Other Information

It is suggested that applicants visit the Agricultural Marketing Resource Center (AgMRC) Web site (*http://www.agmrc.org*) for additional information on value-added agriculture. AgMRC brings together experts from three of the nation's leading agricultural universities—Iowa State University, Kansas State University and the University of California—into a dynamic, electronically based center to create and present information about value-added agriculture. The center draws on the abilities, skills and knowledge of leading economists, business strategists and outreach specialists to provide reliable information needed by independent producers to achieve success and profitability in value-added agriculture. Partial support for the center is derived from a grant administered by RBS.

Dated: February 25, 2005.

Peter Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–4310 Filed 3–4–05; 8:45 am]

BILLING CODE 3410–XY–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: March 9, 2005, 1 p.m.–3 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203–4545.

Dated: March 2, 2005.

Carol Booker,

Legal Counsel.

[FR Doc. 05–4482 Filed 3–3–05; 1:27 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1377]

Termination of Foreign-Trade Subzone 49A Edison, NJ

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on February 6, 1984, the Foreign-Trade Zones Board issued a grant of authority to the Port Authority of New York & New Jersey (the Port), authorizing the establishment of Foreign-Trade Subzone 49A at the Ford Motor Company plant in Edison, New Jersey (Board Order 243, 49 FR 5981, 2/16/84);

Whereas, the Port advised the Board on July 28, 2004 (FTZ Docket 50–2004), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 49A;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 49A, effective this date.

Signed at Washington, DC, this 23rd day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–929 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2005]

Proposed Foreign-Trade Zone—Conroe (Montgomery County), TX; Application for Subzone, WLS Drilling Products, Inc. (Mining Drill Bits); Montgomery, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Conroe, Texas, which has an application pending before the Board for FTZ status, requesting special-purpose subzone status for the warehousing facility (mining drill bits) of WLS Drilling Products, Inc., (WLS Drilling) in Montgomery, Texas. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 25, 2005.

The WLS Drilling facility is located at 18904 Freeport Drive in Montgomery, Texas. The facility (8 employees; 7,000 sq. ft. warehouse with adjacent 2,500 sq. ft. office on 5.2 acres) warehouses and distributes finished rotary rock drill bits used in the mining, construction, and oil and gas industries. WLS Drilling's imported drill bits currently enter the U.S. duty free. However, the application states that the imported products may become subject to duties in the future. WLS Drilling also indicates that, although no manufacturing authority is currently requested, there is the potential for manufacturing at the site in the future. Finally, the application states that the company will benefit from an FTZ-related exemption from local property tax.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 6, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 23, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above and at the Houston U.S. Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, TX 77032.

Dated: February 25, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–928 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1371]

Grant of Authority for Subzone Status, Letourneau, Inc. (Loading Equipment, Components of Offshore Drilling Rigs, Log Handling Equipment, Cranes, Drive Systems, and Parts or Components Thereof); Longview, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Gregg County, Texas, grantee of Foreign-Trade Zone 234, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing facilities (loading equipment, components of offshore drilling rigs, log handling equipment, cranes, drive systems, and parts or components thereof) of LeTourneau, Inc., located in Longview, Texas (FTZ Docket 1–2004, filed 1/15/2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 4291, 1/29/2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the manufacturing facilities of LeTourneau, Inc., located in Longview, Texas (Subzone 234B) at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of February 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–930 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Crystal Crittenden or Magd Zalok, at (202) 482–0989 or (202) 482–4162, respectively; Import Administration, AD/CVD Operations, Office 4, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On August 24, 2004, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on canned pineapple fruit from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 52857 (August 30, 2004). The period of review is July 1, 2003, through June 30, 2004.

Extension of Time Limit for Preliminary Results of Review

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 duty 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 that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The preliminary results of this antidumping duty administrative review of canned pineapple fruit from Thailand are currently scheduled to be completed on April 2, 2005. However, the Department finds that it is not practicable to complete the preliminary results in this administrative review within this time limit because additional time is needed to fully address issues relating to the home market viability, as well as to conduct mandatory verifications of the questionnaire responses and supplemental questionnaire responses.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until August 1, 2005, 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 this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: February 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–922 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke the Order In Part

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Echjay Forgings Ltd. (Echjay) and Viraj Forgings Ltd. (Viraj). The period of review (POR) covers February 1, 2003, through January 31, 2004. We preliminarily determine that neither Echjay nor Viraj sold subject merchandise at less than normal value (NV) in the United States during the POR. We have also preliminarily determined to revoke the order with respect to subject merchandise produced and exported by Viraj.

We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone : (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994, (February 9, 1994). On February 3, 2004, the Department published the ''Notice of Opportunity to Request Administrative Review'' for this order covering the period February 1, 2003 through January 31, 2004 (69 FR 5125). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 5125, (February 3, 2004). In accordance with 19 CFR 351.213 (b)(1), Echjay and Viraj requested that we conduct this administrative review. On March 26, 2004, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the 2003–2004 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation In Part*, 69 FR 15788 (March 26, 2004).

On October 29, 2004, we extended the time limit for the preliminary results of this administrative review to February 28, 2005. *See Stainless Steel Flanges From India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 65835 (October 29, 2004).

Scope of the Antidumping Duty Order

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

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Tariff Act), we verified information provided by Viraj from January 17, 2005, through January 21, 2005, using standard verification procedures, the examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, on file in the Department's Central Records Unit (CRU) located in room B–099 in the main Department of Commerce building.

Intent to Revoke, In Part

On February 27, 2004, Viraj requested revocation of the order covering stainless steel flanges from India as it pertains to its sales. According to section 751(d)(1) of the Tariff Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures the Department must follow in revoking an order, the Department has developed a procedure for revocation set forth at 19 CFR 351.222. Pursuant to subsection 351.222(b), the Department may revoke an antidumping duty order, in part, if it concludes: (i) An exporter or producer has sold the merchandise at not less than NV for a period of at least three consecutive years, (ii) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV, and (iii) the continued application of the antidumping duty order is no longer necessary to offset dumping.

A request for revocation must address these three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than NV during the current review period and that, in the future, it will not sell at less than NV; (2) the company's certification that during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; and (3) the agreement to reinstatement in the order if the Department concludes the company, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

We preliminarily find that the request from Viraj meets all the criteria of 19 CFR 351.222(e)(1). With regard to the criteria of subsection 351.222(b)(2), our preliminary margin calculations indicate that Viraj did not sell stainless steel flanges in the United States at less than NV during the instant POR. *See* ''Preliminary Results of Review,'' below. In addition, Viraj has not sold stainless steel flanges at less than NV in the three previous administrative reviews. *See Certain Stainless Steel Flanges From*

India: Final Results of Antidumping Duty Administrative Review, 67 FR 62439 (October 7, 2002); *Certain Forged Stainless Steel Flanges From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 42005 (July 16, 2003), and *Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty Administrative Review*, 69 FR 10409 (March 4, 2004).

Based on our examination of the sales data submitted by Viraj, we preliminarily determine Viraj sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Viraj to support its request for revocation. *See* ''Analysis Memorandum for Viraj Forgings, Ltd. for the Preliminary Results of the Administrative Review of Stainless Steel Flanges from India,'' dated February 28, 2005, which is in the Department's CRU, room B–099. Thus, we preliminarily find Viraj had zero or *de minimis* margins in each of the last four consecutive administrative reviews, one more than required by our regulations, and sold in commercial quantities in all four years. Also, we preliminarily determine the application of the antidumping duty order to Viraj is no longer warranted for the following reasons: (i) the company had zero or *de minimis* margins for a period of at least three years; (ii) the company has agreed to its immediate reinstatement in the order if the Department finds it has resumed making sales at less than NV and (iii) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, we preliminarily determine that Viraj qualifies for revocation of the order on certain forged stainless steel flanges from India pursuant to 19 CFR 351.222(b)(2), and that the order with respect to Viraj Forgings, Ltd. should be revoked.

If these preliminary findings are followed in our final results of review, we will revoke the order in part with respect to certain forged stainless steel flanges from India produced and exported by Viraj Forgings, Ltd. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for certain forged stainless steel flanges from India produced and exported by Viraj Forgings, Ltd. that were entered, or withdrawn from warehouse for consumption, on or after February 1, 2004, and will instruct U.S. Customs and Border Protection (Customs) to refund any cash deposits for such entries.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States by Echjay and Viraj were made at less than NV, we compared the export price or constructed export price, as appropriate, to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted–average prices for NV and compared these to the prices of individual export price (EP) or constructed export price (CEP) transactions.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products described by the Scope of the Antidumping Duty Order section, above, which were produced and sold by Echjay and Viraj in the home market, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. Where there were no sales of identical or similar merchandise in the home market suitable for comparing to U.S. sales, we compared these sales to constructed value (CV), pursuant to section 773(a)(4) of the Tariff Act.

During the course of this review both respondents requested that the Department modify the model match characteristics used in comparing U.S. and home market sales. Echjay asked that a new characteristic be added to capture the flanges' thickness, while Viraj proposed a new variable be added to differentiate between custom–ordered and standard flanges. However, the Department believes the existing model match methodology captures those physical characteristics which impact directly on the cost and price of these products. Viraj's custom–made products vary only minutely from its standard products, while Echjay's request for a separate thickness category is unnecessary because the differing wall thicknesses are necessarily captured by basing our comparisons on weight. Accordingly, we have not altered our model match criteria for this review.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Tariff Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For sales of both respondents in the United States, we used EP in accordance with section 772(a) of the Tariff Act in those instances where the merchandise was sold directly to the first unaffiliated purchaser prior to importation, and CEP was not otherwise warranted based on the facts of record. For both Echjay and Viraj, we also used CEP in accordance with section 772(b) for those sales made through their respective U.S. affiliates, Echjay USA, Inc. and Viraj USA, Inc.

We calculated EP and CEP, as appropriate, based on the prices charged to the first unaffiliated customer in the United States. We used the date of invoice as the date of sale. We based EP on the packed C&F, CIF duty paid, FOB, or ex–dock duty paid prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including: foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance.

For CEP we also deducted those selling expenses incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, bank commissions and charges, documentation fees, *etc.*), and imputed credit. In accordance with section 772(d)(3) of the Tariff Act, we deducted an amount for profit allocated to the expenses deducted pursuant to sections 772(d)(1) and (2) of the Tariff Act.

Duty Drawback

Section 772(c)(1)(B) of the Tariff Act provides that EP or CEP shall be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.'' The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a

company can demonstrate that there is (i) a sufficient link between the import duty and the rebate, and (ii) sufficient imports of the imported material inputs to account for the duty drawback received for the export of the manufactured product (the so–called ''two–prong test''). *See Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999); *see also Viraj Group, Ltd. v. United States*, 162 F. Supp. 2d 656 (Ct. Int'l Trade 2001) (Commerce's rejection of claimed adjustments to either price or cost for Indian duty drawback sustained; remanded on other grounds).

Echjay claimed it received Duty Entitlement Pass Book (DEPB) certificates from the Indian government which it books in an ''Export Incentives Ledger'' *See* Echjay's June 2, 2004, Section C response at Annexure H. According to Echjay, these DEPB certificates, awarded based on the FOB value of the finished goods, are intended to offset import duties on raw materials, ''and also to nullify the incidence of interest rates higher than international rates, high indigenous cost of electricity and fuels, and local taxes which are built into the cost of locally produced and sold steel.'' *Id.* Echjay stated it ''sold'' all of its DEPB certificates during the POR. *See* Echjay's November 1, 2004, Supplemental Response at page 8.

Viraj claimed it received DEPB certificates to offset the Indian customs duties otherwise payable on imported raw materials. *See* Viraj's June 2, 2004 Section C, response at C–26. In a supplemental response, Viraj stated it has either used DEPB Licenses for self–import of raw material or given such DEPB Licenses to Viraj Alloys, Ltd. (VAL), an affiliated steel producer. Viraj further claimed VAL used the licenses for importing stainless steel scrap and assorted alloys used in manufacturing stainless steel billets. *See* Viraj's October 29, 2004, Supplemental Response at 9.

The Department finds that Echjay and Viraj have not provided substantial evidence on the record to meet the requirement of the first prong of the two–prong test, to wit, to establish the necessary link between the import duty and the reported rebate for duty drawback. While both respondents indicated they received duty drawback in the form of certificates issued by the Government of India, they have failed to establish the necessary direct link between the import duty paid, and the rebate given by the Government of India. Echjay's response makes clear that much of the DEPB certificate program has no bearing on home market import duties of any kind. Moreover, Viraj acknowledges it did not use all its DEPB certificates to claim a rebate on the inputs used to manufacture subject stainless steel flanges but, rather, transferred some of them to VAL to import scrap and alloys for the manufacture of raw steel. Finally, we note the value of the DEPB certificates is calculated based upon the FOB prices of the finished goods, as exported. All these factors demonstrate clearly that there is no direct link between these certificates, and the companies' own imports of inputs, and the eventual production of finished goods for export. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

Normal Value

A. Viability

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), for each respondent we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. We found no reason to determine that quantity was not the appropriate basis for these comparisons, so value was not used. *See* section 773(a)(1)(C) of the Tariff Act and 19 CFR 351.404(b)(2). Therefore, for both respondents we based NV on home market sales to unaffiliated purchasers made in the usual quantities and in the ordinary course of trade.

We based our comparisons of the volume of U.S. sales to the volume of home market and third country sales on reported stainless steel flange weight, rather than on number of pieces. The record demonstrates that there can be large differences between the weight (and corresponding cost and price) of stainless steel flanges based on relative sizes, so comparisons of aggregate data would be distorted for these products if volume comparisons were based on the number of pieces.

B. Cost of Production Analysis

In the most–recently completed segment of this proceeding, the Department disregarded certain Viraj sales made in the home market at less than its cost of production. *See Certain Forged Stainless Steel Flanges From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 63758 (November 10, 2003) (unchanged for final, 69 FR 10409, March 5, 2004). Accordingly, in the instant review the Department determined it had reasonable grounds to believe or suspect that Viraj made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Tariff Act. As a result, we solicited information on Viraj's cost of production to determine if Viraj had made below–cost home market sales in this review.

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act we calculated cost of production (COP) based on the sum of Viraj's cost of materials and fabrication of the foreign like product, adding amounts for home market selling, general and administrative expenses (SG&A), interest expenses and packing costs. The Department relied on the COP data submitted by Viraj in its original and supplemental cost questionnaire responses for these calculations.

D. Test of Home Market Prices

We compared the weighted–average COP for Viraj's home market sales of the foreign like product as required under section 773(b) of the Tariff Act in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales at prices less than COP, we examined whether: (i) Such sales were made in substantial quantities within an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act. We compared COP to home market prices, *less* any applicable movement charges and direct selling expenses.

E. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, when less than 20 percent of a respondent's sales of a given product were at prices less than COP we did not disregard any such sales because they were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the POR were at prices less than COP we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time, pursuant to section 773(b)(2)(D) of the Tariff Act. See Viraj Preliminary Analysis Memorandum, dated February 28, 2005.

Based on this test, we disregarded below–cost sales made during the POR by Viraj.

Price-to-Price Comparisons

For Echjay and Viraj, we compared U.S. sales with contemporaneous sales of the foreign like product in India. As noted, we considered stainless steel flanges identical based on the following five criteria: grade, type, size, pressure rating, and finish. We used a 20 percent difference–in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product. For both respondents, we also made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. Finally, we adjusted for differences in the circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Finally, for Echjay, we also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred in the home market or United States where commissions were granted on sales in one market but not in the other (the ''commission offset'').

Constructed Value

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with 772(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted–average comparison market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For Echjay, we also made adjustments for home market indirect selling expenses to offset commissions in EP comparisons.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP–offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, we obtained information from Echjay and Viraj about the marketing stages involved in their U.S. and home market sales, including a description of the selling activities in the respective markets. In identifying levels of trade for CEP we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. *See Micron Technology v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade the functions and activities should be dissimilar.

Echjay and Viraj both reported one channel of distribution and one LOT in the home market contending that home market sales to distributors and wholesalers were made at the same level of trade, and involved the same selling activities. *See* Viraj's May 4, 2004, Section A response at 11 (Viraj Section A Response); *see also*, Echjay's May 11, 2004, Section A response at 8–9 (Echjay Section A Response). In fact, for both respondents all merchandise was sold in the home market on *ex works* terms. *See, e.g.*, Echjay's June 2, 2004, Section B Response at 7 and Viraj's June 2, 2004, Section B response, at 14. After examining the record evidence provided by both companies, we preliminarily determine that for Echjay and Viraj, a single LOT exists in the home market.

Echjay and Viraj further contended they provided substantially the same level of customer support on their U.S. EP sales as they provided on their home market sales to distributors or wholesalers. For both companies this included customer contact, order processing, arranging customer pick–up at the mill, invoicing, and processing payments. The Department has determined that we will find sales to be at the same LOT when the selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412 (c)(2). We found the selling functions to be virtually identical for home market sales to distributors and wholesalers. We also found Echjay and Viraj performed virtually the same level of customer support services on their U.S. EP sales as they did on their home market sales. *See* Echjay Section A Response and Viraj Section A Response, *op. cit.*. Therefore, for Echjay and Viraj, we preliminarily find that a single LOT exists for these companies' EP sales which is on the same LOT as sales in the home market.

As to CEP sales, in its Section A Response Echjay indicated its U.S. subsidiary, Echjay USA, Inc., performed no selling activities or services beyond notifying the final customer of the merchandise's arrival at the U.S. port; customers were responsible for arranging shipment and Customs clearance at their own expense. *See* Echjay Section A Response at 9. Echjay further asserts ''[f]or all our sales, both to our US market as well as our [h]ome market, the functions and services provided by us remain the same and hence the sales are at the same level of trade.'' Similarly, although Viraj sells through a U.S. affiliate, Viraj USA, Inc., the subject merchandise is shipped directly to the unaffiliated U.S. customer. Viraj notes it is ''claiming *no CEP* offset in calculation of normal value.'' Viraj Section A Response at 14 (original emphasis).

The record evidence supports a finding that in both markets and in all channels of distribution, Echjay and Viraj perform essentially the same level of services. These include order processing, packing, shipping and invoicing of sales, and processing of payments. Based on our analysis of the selling functions performed on EP and CEP sales in the United States, and sales in the home market, we determine that the EP and CEP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. Accordingly, we preliminarily find that no level of trade adjustment or CEP offset is appropriate for either Echjay or Viraj.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review we preliminarily find the following weighted–average dumping margins exist for the period February 1, 2003, through January 31, 2004:

Manufacturer/Exporter	Margin (percent)
Echjay Forgings, Ltd.	0.03
Viraj Forgings, Ltd.	0.01

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issue, 2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates based on the total amount of antidumping duties calculated for the examined sales made during the POR divided by the total entered value, or quantity (in kilograms), as appropriate, of the examined sales. Upon completion of this review, where the assessment rate is above de minimis, we shall instruct Customs to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be the rates established in the final results of administrative review; if the rate for a particular company is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company; (2) for manufacturers or exporters not covered in this review, but covered in the original less–than-fair–value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company–specific rate; (3) if the exporter is not a firm covered in this review, a prior review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for that manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation (59 FR 5994, February 9, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–919 Filed 3–6–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Low Enriched Uranium (LEU) from France in response to requests by USEC Inc. and the United States Enrichment Corporation (collectively, petitioners) and by Eurodif, S.A.(Eurodif), Compagnie Générale Des Matières Nucléaires (COGEMA) and COGEMA, Inc. (collectively, Eurodif/COGEMA or the respondent). This review covers sales of subject merchandise to the United States during the period of February 1, 2003, through January 31, 2004.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results.

See the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Elfi Blum-Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–0197, respectively.

Background

On February 13, 2002, the Department published the antidumping duty order on LEU from France in the **Federal Register** (67 FR 6680). On February 3, 2004, the Department published a notice of opportunity to request an administrative review of this order (69 FR 5125). On February 4, 2004 and February 26, 2004, respectively, the Department received timely requests for review from Eurodif/COGEMA and from petitioners. On March 26, 2004, we published a notice initiating an administrative review of the antidumping order on LEU from France covering one respondent, Eurodif/COGEMA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788 (March 26, 2004).

The Department issued its original questionnaire, sections A through D, on April 14, 2004, and received timely responses. On October 28, 2004, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until February 28, 2005. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 62867 (October 28, 2004).

On October 29, 2004, pursuant to an allegation filed by petitioners, the Department initiated an investigation to determine whether Eurodif/COGEMA's purchases of electricity from Électricité de France (EdF), an affiliated supplier, during the period of review (POR), were made at prices below the cost of production (COP). Consequently, on November 4, 2004, and on December 23, 2004, the Department issued questionnaires on the COP of electricity and received timely, although incomplete, responses.

On December 14, 2004, the petitioners filed comments stating that the respondent's costs for research and development (R&D) were under-reported. The Department is in the process of reviewing the information and argument submitted by the petitioners.

In response to comments filed by petitioners, on February 10, 2005, Eurodif/COGEMA filed additional information. On the same day, the Department reiterated its request for a reconciliation of the costs of electricity from EdF's Summary Annual and Unbundled 2003 Financial Statements to the information in the record which was used to calculate the per-unit cost of electricity. *See* Memorandum to File from Myrna Lobo, ''Second Antidumping Duty Administrative Review of Low Enriched Uranium from France; Team Meeting with Outside Party,'' dated February 16, 2005, on file in the Central Record Unit, Room B–099 of the Main Commerce Building (CRU). Eurodif/COGEMA filed two more submissions on the costs of electricity on February 15, 2005, and February 18, 2004, respectively. The Department notified all parties that factual information would not be accepted after February 18, 2005, unless requested by the Department. Parties were also advised that any submission filed as of February 22, 2005, would not be considered for the preliminary results of review. *See* Memorandum to File from Maria MacKay, Program Manager, ''New Factual Information Deadline,'' dated February 23, 2005, on file in the CRU.

Period of Review

This review covers the period February 1, 2003, through January 31, 2004.

Scope of the Order

The product covered by this order is all low enriched uranium. LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis

Home Market Viability

In accordance with section 773(a)(1)(B) and (C) of the Tariff Act of 1930, as amended (the Act), to determine whether there was a sufficient volume of sales in the home market and/or in third country markets to serve as a viable basis for calculating NV, we compared Eurodif/COGEMA's volume of home market sales and third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Eurodif/COGEMA did not have any sales in the home market during the POR. Pursuant to section 773(a)(1)(B) and (C) of the Act and section 351.404 (b) of the Department's regulations, because Eurodif/COGEMA's aggregate volume of sales of the foreign like product both in Japan and Sweden was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that Japan and Sweden are viable markets. However, due to the difficulties involved in calculating a difference-in-merchandise adjustment for non-identical products, the Department determined to use constructed value (CV) as the basis of NV in this review.

See Memorandum to Dana Mermelstein from Elfi Blum-Page and Myrna Lobo, ''Antidumping Duty Administrative Review of Low Enriched Uranium (LEU) from France, Market Viability,'' (*Viability Memorandum*) dated December 20, 2004, on file in the CRU.

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at less-than-fair value (LTFV), we compared the CEP to CV, as described in the *Constructed Export Price* and *Calculation of Normal Value Based On Constructed Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated CEPs and compared them to CV.

We note that during the POR, the respondent sold LEU in the United States pursuant to contracts in which the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped (so-called separative work unit (SWU) [1] contracts). However, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. During the POR, Eurodif/COGEMA made sales to the United States through its U.S. affiliate, COGEMA Inc., which then resold the merchandise to unaffiliated customers. Therefore, Eurodif/COGEMA classified all of its export sales of LEU as CEP sales.

As stated in section 351.401(i) of the Department's regulations, the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the material terms of sale. In this review, we find that the material terms of sale are set in the contract between COGEMA Inc. and the U.S. customer. Therefore, as in the prior review, we have used the contract date as the date of sale. *See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France*, 69 FR 46501 (August 3, 2004).

The Department calculated CEP for Eurodif/COGEMA based on packed prices to the first unaffiliated customer in the United States. For all sales, which involved payments on a SWU basis, we translated the prices to an LEU basis, as indicated above, by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's reported entered value of feed, which was based on publicly available information used for customs entry purposes. We made deductions from the starting price, net of discounts, for movement expenses (foreign and U.S. movement, shipment of sample assays, movement of customer feed from North America to France, marine insurance, merchandise processing and U.S. harbor maintenance fees, and brokerage) in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In addition, in accordance with section 772(d)(1) of the Act, we also deducted credit expenses and indirect selling expenses, including inventory carrying costs, incurred in the United States and France and associated with economic activities in the United States.

Furthermore, in accordance with sections 772(d)(3) and 772(f) of the Act, we made a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of total revenue and total expenses related to sales in the comparison market and the U.S. market. In this case, we based NV on CV; therefore, there was no home market profit from which to derive CEP profit. Consequently, we based CEP profit on the total expenses and total revenue related to Eurodif's U.S. and third-country sales of LEU. *See* Memorandum to the File from Myrna Lobo and Elfi Blum-Page, ''Analysis of Eurodif/COGEMA for the Preliminary Results of the Second Administrative Review of Low Enriched Uranium (LEU) from France,'' February 28, 2005 (*Prelim Analysis Memo*).

Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Because of the difficulties involved in calculating a difference-in-merchandise adjustment for non-identical products (*see* the *Home Market Viability* section above), in this review the Department determined to use CV as the basis of NV.

Section 773(e) of the Act provides that CV shall be based on the sum of the costs of materials and fabrication of the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. In accordance with section 773(e)(2)(B)(iii) of the Act, we based general and administrative (G&A) expenses on amounts derived from Eurodif's financial statements. In our calculation of the interest expense, we based financial expenses on the financial statements of COGEMA's parent company, AREVA, which represents the highest level of consolidation for Eurodif. For selling expenses, we used information on indirect selling expenses in third countries, including Japan, provided in the questionnaire response. Where appropriate, we made circumstance of sale (COS) adjustments to CV, in accordance with section 773(a)(8) of the Act and section 351.410 of the Department's regulations.

We calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action regarding the Uruguay Round Agreements Act, H.R. Doc. 103–316, 103d Cong., 2d Sess. (SAA) 841. A positive amount for profit must be included in the CV. There were no home market sales during the POR, and, based on our calculations, there is no positive amount of profit with respect to third country sales. Thus, we find that it is appropriate to use a profit rate based on AREVA's front end division.[2] AREVA's front end division's activities are similar to Eurodif/COGEMA's business operations, and, according to AREVA's annual report, a substantial

[1] A SWU is a unit of measurement of the effort required to separate the U235 and U238 atoms in uranium feed in order to create a final product richer in U^{235} atoms.

[2] According to AREVA's 2003 Annual Report, the AREVA group operates in every area of the nuclear fuel cycle. In the Front End of the cycle, it supplies uranium ore, and converts and enriches the uranium in order to fabricate the fuel assemblies that go into the reactor core. Specifically, the Front End division is in charge of: (1) Uranium ore exploration, mining, and treatment (concentration); (2) uranium conversion into a chemical form suitable for enrichment; (3) uranium 235 enrichment; and (4) fuel fabrication and assembly. *See* Eurodif/COGEMA Supplemental Sections A–D response, dated October 18, 2004, Exhibit A–66 at page 27.

percentage of AREVA's front end activities were associated with sales outside the United States. These similarities lead us to conclude that this is a reasonable method for calculating Eurodif's profit. Therefore, lacking other alternatives, we used a CV profit rate based on AREVA's front end division. *See Prelim Analysis Memo.* The profit cap under section 773(e)(2)(B)(iii) of the Act cannot be calculated in this case because we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category.

Electricity is considered a major input into the production of LEU. Eurodif obtained electricity from its affiliated supplier, EdF. On June 9, 2004, the petitioners alleged that Eurodif purchased electricity from EdF at prices less than the affiliated suppliers' COP during the POR. After reviewing the allegation, the Department determined that petitioners' major input allegation provided a reasonable basis on which to initiate an investigation of Eurodif's purchases of electricity from EdF. *See* Memorandum from Myrna Lobo and Elfi Blum-Page, Case Analysts, to Barbara E. Tillman, Director, Office 6, ''Antidumping Duty Administrative Review of Low Enriched Uranium from France, Petitioners' Allegation of Purchases of a Major Input From Electricité de France (EdF), an Affiliated Party, at Prices Below the Affiliated Party's Cost of Production,'' dated October 29, 2004.

Section 773(f)(3) of the Act states that ''{i}f, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).'' [3] In applying the major input rule under § 351.407(b) of the Department's regulations, the Department will normally compare the transfer price between affiliates to the market price for the input to ensure that the transfer price is at least reflective of the market price. For major inputs, the Department then compares the transfer price and the market price to the COP to ensure that the transfer price charged recovers the producer's costs of production. As such, we evaluated the affiliated supplier's reported electricity COP.

On November 4, 2004, the Department solicited information from the respondent regarding the calculation of EdF's COP. On December 23, 2004, we asked for clarification on the significant differences between the reported single average cost figure and the expense amounts shown in EdF's annual report. As we are unable to ascertain the reconciling differences between the reported costs and the costs shown in the annual report, we have adjusted EdF's reported cost of producing electricity by calculating a single weighted-average cost of producing electricity for the POR based on the information from EdF's annual report. *See Use of Partial Facts Available* section below.

Because the calculated COP for electricity exceeded the transfer price Eurodif paid to EdF for the electricity purchased, we calculated CV based on the COP of EdF, in accordance with section 773(f)(3) of the Act. For a full discussion of the COP of electricity, due to the proprietary nature of this information (*see Prelim Analysis Memo*).

Use of Partial Facts Available

The Department has determined that the use of partial facts available is appropriate for purposes of determining the preliminary dumping margin for subject merchandise sold by Eurodif/COGEMA. Specifically, as indicated above, the Department has applied partial facts available to its CV calculation with respect to electricity, a major input into the production of LEU (*see Prelim Analysis Memo*).

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

As indicated above, on November 4, 2004, the Department issued a questionnaire, requesting that Eurodif/COGEMA provide the actual per-unit cost of its affiliated electricity supplier and provide worksheets demonstrating the derivation of this cost from the affiliated supplier's cost accounting system. The Department issued another questionnaire on December 23, 2004, requesting that Eurodif/COGEMA provide documentary support for the information already provided and to reconcile such information to EdF's financial statements. The Department's detailed questions concerning the reconciliation of the information provided are contained in the public versions of the two major input questionnaires, which are on file in the CRU.

As long recognized by the U.S. Court of International Trade (CIT), the burden to create a complete and accurate record is on the respondent, not on the Department. *See Pistachio Group of the Association Food Industries* v. *United States*, 671 F. Supp. 31, 39–40 (CIT 1987). In its narrative response to the Department's second questionnaire, dated January 19, 2005, the respondent indicated that this is an unusually pressing and challenging time for EdF's financial department and that EdF is in the process of closing its year-end books and preparing its annual financial statements. In addition, respondent claimed that EdF staff was responding to numerous projects at the discretion of its new management and was also preparing for a public offering of the company's capital. Eurodif/COGEMA repeatedly stated that EdF would provide any further information at verification.

Eurodif/COGEMA submitted additional information on February 10, 2005, and a partial cost reconciliation on February 15, 2005, which the Department determined to be insufficient. On February 18, 2005, Eurodif/COGEMA filed additional information pertaining to EdF's cost reconciliation, which the Department still considered to be insufficient. At that point, due to the imminent preliminary results of review, the Department notified all parties that no new information would be accepted unless requested by the Department, and that any submission filed as of February 22, 2005, would not be considered for these preliminary results. The Department also indicated that it would solicit more information from respondent regarding EdF's COP after the issuance of the preliminary results and that it would revisit the electricity

[3] Paragraph 2 of section 773(f) of the Act is the transactions disregarded rule.

cost calculation in computing the CV for the final results of this review.

Consequently, for these preliminary results, the Department has determined that Eurodif/COGEMA has not cooperated to the best of its ability in responding to the Department's request for information. In accordance with section 776(a)(2)(A) and (B) of the Act, we are applying partial facts otherwise available in calculating Eurodif/COGEMA's dumping margin. As facts available, the Department has used a COP for electricity calculated on the basis of EdF's 2003 financial statements. *See Prelim Analysis Memo.*

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the U.S. sales. *See* section 351.412(c)(1)(ii) of the Department's regulations. The LOT of the sales on which NV is based is the level of the starting-price sale in the comparison market; when NV is based on CV, the LOT is the level of the sales from which we derive SG&A and profit. For CEP, the U.S. LOT is the level of the constructed sale from the exporter to the importer. *See* § 351.412 of the Department's regulations.

Generally, to determine whether the sales on which NV is based are at a different LOT than the CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002); *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997). For CEP sales, we consider only the selling activities reflected in the price after the deduction of certain expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that, if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In the current review, Eurodif/COGEMA provided information about the marketing stages involved in the reported U.S. sales, as well as in the home market and in third countries, including a description of the selling activities performed by the respondent for each channel of distribution. Given that all U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the U.S. market, the respondent sells to utility customers through one channel of distribution. After deducting expenses associated with the selling activities reflected in the price under section 772(d) of the Act (*i.e.*, the expenses of COGEMA Inc.), we examined the remaining selling expenses which were associated with such activities as strategic planning and marketing, customer sales contact, production planning and evaluation, contract administration, pricing, and quality assurance. These expenses were provided through one U.S. channel of distribution. Therefore, we found all U.S. sales to be made at a single LOT.

Because Eurodif/COGEMA had sales to third countries during the POR, we based our LOT analysis on Eurodif/COGEMA's third country sales. For such sales, the evidence on the record indicates that eight of the 13 categories of selling functions Eurodif performs are at the same level of activity, and five are performed at differing levels of activity, compared to sales to the United States.[4] Accordingly, we find that Eurodif generally performs the same kinds of selling functions and, in most cases, at the same level of intensity in both markets, the United States and third countries. Therefore, we preliminarily determine that Eurodif/COGEMA's sales to the United States and to third countries are made at the same LOT. Accordingly, we have made no LOT adjustment or CEP offset in our margin calculation program for these preliminary results. For a more detailed discussion, *see Prelim Analysis Memo.*

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Margin (percent)
Eurodif/COGEMA	21.71

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 (c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Duty Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to

[4] *See* Eurodif/COGEMA's Section A questionnaire response dated May 18, 2004, at page A–20 to A–25 and Exhibit A–4.

section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of LEU from France entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) For Eurodif/COGEMA, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 19.95 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Low Enriched Uranium fro France,* 67 FR 6680 (February 13, 2002). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–920 Filed 3–4–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jeff Boord or Nicholas Czajkowski, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–1395, respectively.

Background

On August 31, 2004, the Department of Commerce (the Department) received timely requests to conduct an administrative review of the antidumping duty order on oil country tubular goods from Korea. On September 22, 2004, the Department published a notice of initiation of this administrative review, covering the period of August 1, 2003, through July 31, 2004 (69 FR 56745). The preliminary results are currently due no later than May 3, 2005.

Extension of Time Limits for Preliminary Results

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

We are currently analyzing a number of complex issues with respect to the basis for normal value which must be addressed prior to the issuance of the preliminary results. Specifically, our analysis of input cost issues and comparison market issues requires additional time and makes it impracticable to complete the preliminary results of this review within the originally anticipated time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than August 31, 2005, which is 365 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–923 Filed 3–4–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Initiation of Anticircumvention Inquiries of Antidumping Duty Order

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

ACTION: Notice of Initiation of Anticircumvention Inquiries of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China.

SUMMARY: In response to a request from the National Candle Association (''NCA'' or ''Petitioners''), the Department of Commerce (''the Department'') is initiating an anticircumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended, (''the Act'') to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable–based waxes have been subject to a minor alteration such that the addition of the non–petroleum content to these candles results in products that are ''altered in form or appearance in minor respects'' from the subject merchandise that these mixed wax petroleum candles can be considered subject to the antidumping duty order on petroleum wax candles from the People's Republic of China (''PRC'') under the minor alterations provision. *See Notice of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 FR 30686 (August 28, 1986) (''*Order*'').

In addition, in response to a request from the NCA, the Department is also initiating an anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether mixed wax candles composed of petroleum wax and varying amounts of either palm or vegetable–based waxes are later–developed products that can be considered subject to the antidumping duty order on petroleum wax candles from the PRC under the later–developed merchandise provision.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Julia Hancock, or Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–3208, (202) 482–1394, and (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2004, Petitioners requested that the Department conduct an anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether candles containing palm or vegetable–based waxes as the majority ingredient and exported to the United States are circumventing the antidumping duty order on petroleum wax candles from the PRC.

On October 12, 2004, Petitioners requested that the Department conduct an anticircumvention inquiry pursuant to section 781(c) of the Act to determine whether candles containing palm or vegetable–based waxes and exported to the United States are circumventing the antidumping duty order on petroleum wax candles from the PRC.

On November 15, 2004, the Candle Corporation of America (''CCA''), a domestic producer, submitted comments in opposition to Petitioners' request that the Department initiate this anticircumvention inquiry. On November 15, 2004, the Department extended the deadline by three weeks for initiating the later–developed merchandise anticircumvention inquiry from November 22, 2004, to December 13, 2004. In addition, on November 15, 2004, the Department extended by three weeks the deadline for initiating the minor alterations anticircumvention inquiry, from November 26, 2004, to December 17, 2004.

On November 16, 2004, Russ Berrie & Company, Inc. (''Russ Berrie''), a domestic importer, submitted comments in opposition to Petitioners' request that the Department initiate an anticircumvention inquiry.

On December 2, 2004, J.C. Penney Company, Inc., Target Corporation, the National Retail Federation, the MVP Group, the Candle Company, and the World at Large, hereinafter collectively known as the Coalition for Free Trade in Candles (''CFTC''), which represents these domestic importers, submitted comments in opposition to Petitioners' request that the Department initiate an anticircumvention inquiry.

On December 6, 2004, Fine Arts Marketing, Inc.; HomeScents, Inc.; Lava Enterprises Inc.; Makebest Industries, Ltd.; Silk Road Gifts, Inc.; Tag Trade Associates Group, Ltd. and Zodax, Inc., hereinafter collectively referred to as the ''Tuttle Importers,'' submitted comments in these domestic importers' opposition to Petitioners' request that the Department initiate an anticircumvention inquiry.

On December 9, 2004, Petitioners submitted rebuttal comments to the Department in response to comments made by those parties opposing Petitioners' request for the initiation of an anticircumvention inquiry.

On December 10, 2004, Pier 1 Imports (U.S.), Inc. (''Pier 1''), a domestic importer, submitted comments in opposition to Petitioners' request that the Department initiate an anticircumvention inquiry.

On December 13, 2004, the Department extended the later–developed merchandise anticircumvention initiation deadline because additional information was needed for the Department to make a decision within the established time limits to initiate an anticircumvention inquiry. The deadline for initiating the later–developed merchandise anticircumvention inquiry was extended by sixty days from December 13, 2004, to February 11, 2005. Also on December 13, 2004, the Department issued a supplemental questionnaire to Petitioners regarding several areas in the later–developed merchandise anticircumvention request that needed further clarification.

In addition, on December 13, 2004, the Department extended the minor alterations anticircumvention initiation deadline a second time because additional information was needed Department to make a decision within the established time limits to initiate an anticircumvention inquiry. The deadline for initiating the minor alterations anticircumvention inquiry was extended by sixty days from December 17, 2004, to February 15, 2005. Also, on December 13, 2004, the Department issued a supplemental questionnaire to Petitioners addressing several areas in the minor alterations anticircumvention request that needed further clarification.

On December 17, 2004, Petitioners requested an extension of three weeks to respond to the Department's supplemental questionnaires. On December 20, 2004, the Department granted Petitioners an extension of fifteen days from December 27, 2004, to January 14, 2005, to respond to the Department's supplemental questionnaires. On January 14, 2005, Petitioners submitted a response to the supplemental questionnaires issued by the Department.

On January 24, 2005, the CFTC requested that the Department extend the deadline for initiating the anticircumvention inquiry by one month from February 11, 2005, to March 11, 2005.

On January 25, 2005, Petitioners submitted samples of candles, which were referenced in the supplemental questionnaire response filed on January 14, 2005.

On January 27, 2005, Petitioners submitted comments in opposition to the CFTC's request to extend the deadline for initiating the anticircumvention inquiry.

On January 28, 2005, CCA submitted comments in response to Petitioners' supplemental questionnaire response.

On January 31, 2005, the Department extended the later–developed merchandise anticircumvention initiation deadline a third time because domestic interested parties needed additional time to respond to Petitioners' supplemental response. The deadline for initiating the later–developed merchandise anticircumvention inquiry was extended by ten days from February 11, 2005, to February 22, 2005. Also, on January 31, 2005, the Department extended the anticircumvention initiation deadline for the minor alterations anticircumvention inquiry by ten days from February 15, 2005, to February 25, 2005. In addition, on January 31, 2005, the Department granted CFTC and other interested parties an extension of ten days from January 28, 2005, to February 7, 2005, to submit factual information rebutting, clarifying, or corroborating factual information submitted by Petitioners to respondents on January 18, 2005.

Also on January 31, 2005, Russ Berrie requested that the Department extend the deadline for initiation. In its submission, Russ Berrie noted that it had submitted interim comments rebutting Petitioners' supplemental response in case in which the

Department did not extend the deadline as previously requested by the CFTC.

On February 2, 2005, CFTC submitted comments in response to Petitioners' supplemental questionnaire responses.

On February 7, 2005, Petitioners submitted rebuttal comments in response to comments made by interested parties regarding Petitioners' supplemental response. On February 7, 2005, Silk Road Gifts, Ltd. (''Silk Road''), a domestic importer, submitted comments in response to Petitioners' supplemental response. Also on February 7, 2005, CFTC submitted additional comments and samples of candles.

On February 11, 2005, the Department placed a memorandum on the file regarding the ex parte meeting the Department had with counsel for Petitioners on February 10, 2005.

On February 16, 2005, the Department placed a memorandum on the file regarding the ex parte meeting Acting Assistant Secretary Joseph Spetrini had with members of the Coalition for Free Trade in Candles on February 15, 2005.

On February 18, 2005, the Department extended the initiation deadline of the anticircumvention inquiry by three days from February 22, 2005, to February 25, 2005. Additionally, on February 18, 2005, Qindao Kingking Applied Chemistry Co., Ltd.; Shonfeld's (USA), Inc.; Alef Judaica, Inc.; and Amscan, Inc. submitted comments in response to Petitioners' supplemental questionnaire response.

On February 24, 2005, a memorandum to the file was placed by the Department regarding the ex parte meeting that the Acting Assistant Secretary Joseph Spetrini had with counsel for Petitioners on February 23, 2005. Additionally, on February 24, 2005, Petitioners filed further rebuttal comments.

Scope of Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; round, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States (''TSUS'') 755.25, Candles and Tapers. The product covered are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. *See Order; see also Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

Initiation of Minor Alterations Anticircumvention Proceeding

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been ''altered in form or appearance in minor respects * * * whether or not included in the same tariff classification.''

Based on the language contained in the petition, the antidumping duty order, and the fact that the domestic ''like product'' determinations of the ITC are not dispositive, the Department finds that there is sufficient basis to initiate an anticircumvention inquiry pursuant to section 781(c) of the Act to determine whether the addition of vegetable and/or palm–based wax results in a minor alteration, and thus, a change so insignificant as to render the petroleum based, mixed candle subject to the antidumping duty order on petroleum wax candles from the PRC.[1]

Scope of the Minor Alterations Anticircumvention Proceeding

Petitioners argue that it is almost impossible to specify in this application all or most all PRC producers and importers of mixed wax petroleum wax candles containing varying amounts of palm or other vegetable–based waxes because of the continuously increasing quantity of imports of these candles into the United States. Additionally, Petitioners argue that an application requesting an anticircumvention inquiry and a resulting determination finding circumvention limited to only a few companies and specific candles would have little to no effect in preventing circumvention of the order.

The Department recognizes that Petitioners have limited information available to them at this time regarding the production, exportation and importation of mixed wax petroleum wax candles containing varying amounts of palm or other vegetable–based waxes. Specifically, we agree that obtaining subject and non–subject import data from the only tariff classification for all candles and the unknown number of companies producing and exporting to the United States mixed wax petroleum wax candles containing varying amounts of palm and/or vegetable–based waxes is difficult. However, we also note that Petitioners have provided a list of companies importing and, to a certain extent, identified those companies producing/exporting mixed wax petroleum wax candles varying amounts of palm and/or vegetable–based waxes based on that companies' scope ruling request submitted to the Department. *See Petitioners' Minor Alterations Supplemental Response* (January 14, 2005) at Appendix I. In addition, Petitioners have provided, where available, specific model/product/SKU numbers for consideration in this anticircumvention inquiry using the data from the companies' scope ruling requests previously submitted to the Department. *See Petitioners' Minor Alterations Submission* (October 12, 2004) at Appendix 1.

We are initiating this anticircumvention inquiry on particular PRC exporters, as identified by Petitioners in Appendix 1 of their January 14, 2005, submission. However, within 45 days of the date of initiation of this inquiry, if the Department receives sufficient evidence that other PRC manufacturers are involved in the production of mixed wax petroleum wax candles containing varying amounts of palm and/or vegetable–based waxes for export to the United States, we will consider examining such additional manufacturers.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

Initiation of Later–Developed Merchandise Anticircumvention Proceeding

Section 781(d)(1)(A) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise is developed after an investigation is initiated (''later–developed merchandise'').

Based on the language contained in the petition and the antidumping duty order, and the fact that the domestic like product determinations of the International Trade Commission (''ITC'') is not dispositive, the Department finds that there is sufficient basis to initiate an anticircumvention inquiry pursuant to section 781(d) of the Act to determine whether candles produced through the

[1] The various comments submitted by interested parties will be considered by the Department in its final determination.

addition of vegetable and/or palm–based wax to petroleum wax are later–developed products that can be considered subject to the antidumping duty order on petroleum wax candles from the PRC under the later–developed merchandise provision.[2]

The Department recognizes that the ITC's final injury determination states that ''commercial production of candles generally uses ''natural'' waxes (paraffins, microcrystallines, stearic acid, and beeswax) in various combinations.'' *See Candles from the People's Republic of China*, Investigation No. 731–TA–282 (Final), USITC Publication 1888 (August 1986) at 2 (''ITC Final Determination''). In addition, we note that the *ITC Final Determination* defined petroleum wax candles ''as those composed of over 50 percent petroleum wax,'' and noted that such candles ''may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt–point, viscosity, and burning power.'' *Id*. However, because the Department did not address the proportion of these waxes that would be indicative of petroleum wax candles, there is no clear basis for the Department to make a conclusive determination that candles with non–petroleum waxes in a different proportion are not later–developed merchandise. Consequently, we are initiating this inquiry under section 781(d) of the Act.

In addition, parties may submit comments regarding the appropriateness of our later–developed analysis as provided in this notice, no later than thirty days from the date of publication of this notice. Rebuttal comments are due no later than forty days from the date of publication of this notice.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

We intend to notify the ITC in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C).The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determinations within 300 days of the date of publication of this initiation. This notice is published in accordance with sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i).

Dated: February 25, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–918 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–S

[2] The Department recognizes that certain parties submitted comments addressing certain factors as required by section 781(d) of the Act, however the Department will address these comments in the final determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting the fifth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') covering the period February 1, 2003, through January 31, 2004. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR''), for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Musser or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777, or (202) 482–1766, respectively.

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China,* 64 FR 8308 (February 19, 1999).

On February 3, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 69 FR 5125 (February 3, 2004). On February 5 and 27, 2004, the Department received timely requests from Dingyuan Import & Export Corporation (''Dingyuan''), Gerber Food (Yunnan) Co., Ltd., Gerber Food (Yunnan) Co., Ltd., (''Gerber''), Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian''), Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest''), Shantou Hongda Industrial General Corporation, (''Shantou Hongda''), Shandong Jiufa Edible Fungus Corporation, Ltd. (''Jiufa''), and Xiamen International Trade & Industrial Co., Ltd. (''XITIC'') for an administrative review pursuant to 19 CFR 351.213(b).

On February 27, 2004, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) of 19 companies,[2] which it claimed were

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trae which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushrooms Canning Company, and Sunny Dell Foods, Inc.

[2] The petitioner's request included the following companies: (1) China Processed Food Import & Export Company (''COFCO'') and its affiliates China National Cereals, Oils, & Foodstuffs Import & Export Corporation (''China National''), COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou''), Fujian Zishan Group Co. (''Fujian Zishan''), Xiamen Jiahua Import & Export Trading Co., Ltd. (''Xiamen Jiahua''), and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. (''Yu Xing''); (2) Gerber; (3) Green Fresh Foods (Zhangzhou) Co., Ltd. and its affiliate Zhangzhou Longhai Lubao Food Co., Ltd.; (4) Guangxi Hengxian; (5) Guangxi Yizhou Dongfang Cannery (''Guangxi Yizhou''); (6) Guangxi Yulin Oriental Food Co.; Ltd. (''Guangxi Yulin''); (7) Nanning Runchao Industrial Trade Co., Ltd. (''Nanning Runchao''); (8) Primera Harvest; (9) Raoping Xingyu Foods Co., Ltd. (''Raoping Xingyu'') and its affiliate Raoping Yucun Canned Foods Factory (''Raoping Yucun''); (10) Shanghai Superlucky Import & Export Company, Ltd. (''Superlucky''); (11) Shantou Hongda; (12) Shenxian Dongxing Foods Co., Ltd. (''Shenxian Dongxing''); (13) Shenzhen Qunxingyuan Trading Co., Ltd. (''Shenzhen Qunxingyuan''); (14) Tak Fat Trading Co. (''Tak Fat'') and its affiliate Mei Wei Food Industry Co., Ltd. (''Mei Wei''); (15) Xiamen Zhongjia Imp. & Exp. Co., Ltd. (''Zhongjia''); (16) XITIC and its affiliate Inter-Foods D.S. Co., Ltd.; (17) Zhangzhou Hongning Canned Food Factory; (18) Zhangzhou Jingxiang Foods Co., Ltd.; and (19) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui'').

producers and/or exporters of the subject merchandise. Five of these 19 companies also requested a review.

On March 30, 2004, the Department initiated an administrative review covering the companies listed in the requests received from the interested parties. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 69 FR 15788, 15801 (March 26, 2004)).

On October 15, 2004, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than February 28, 2005 (69 FR 61202).

Respondents

On March 30, 2004, we issued the antidumping duty questionnaire to each PRC company listed in the above-referenced initiation notice.

On April 1, 2004, the respondents Guangxi Yizhou, Nanning Runchao, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, and Shenzhen Qunxingyuan each indicated that it did not have shipments of the subject merchandise to the United States during the POR.

On May 7, 2004, the respondents Minhui, Primera Harvest, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia each indicated that it did not have shipments of the subject merchandise to the United States during the POR.

From May 13 through May 28, 2004, COFCO and its affiliates, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, Shantou Hongda, and XITIC submitted their responses to the Department's antidumping duty questionnaire.

From May 29 through July 15, 2004, the petitioner submitted comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, and Guangxi Hengxian.

From July 7 through August 3, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, Shantou Hongda, and XITIC supplemental questionnaires.

On August 3, 2004, Shantou Hongda indicated that it no longer intended to participate in this review and requested that the Department extend the time limit for withdrawing its request for an administrative review.

From August 11 through September 13, 2004, COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC submitted their responses to the Department's supplemental questionnaire.

From September 16 through October 18, 2004, the petitioner submitted additional comments on the questionnaire responses provided by COFCO, Gerber, and Guangxi Hengxian.

From October 12 through November 29, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC second supplemental questionnaires.

From November 9 through December 27, 2004, COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC submitted their responses to the Department's second supplemental questionnaires.

On December 2, 2004, the petitioner submitted additional comments on the second supplemental questionnaire response provided by Guangxi Hengxian.

On November 18, 2004, the Department issued Gerber a third supplemental questionnaire which it submitted on December 16, 2004.

On December 20, 2004, the Department issued Guangxi Hengxian a third supplemental questionnaire which it submitted on January 12, 2005.

On December 29, 2004, the Department issued COFCO a third supplemental questionnaire which it submitted on January 25, 2005.

From December 17 through December 20, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC a sales and cost reconciliation questionnaire, which the respondents submitted from January 19, through January 26, 2005.

On December 29, 2004, the Department issued Gerber a fourth supplemental questionnaire which it submitted on January 24, 2005.

As a result of not receiving its response to the antidumping duty questionnaire, the Department issued a letter to Zhangzhou Jingxiang on January 3, 2005, which notified this company of the consequences of not having responded to the Department's antidumping questionnaire.

On January 18, 2005, the petitioner submitted additional comments on the questionnaire responses provided by COFCO.

Surrogate Country and Factors

On April 29, 2004, the Department provided the parties an opportunity to submit publicly available information (''PAI'') for consideration in these preliminary results.

On August 16, 2004, the petitioner, Gerber, Guangxi Hengxian, Jiufa, and XITIC submitted PAI for use in valuing the factors of production. On August 26, 2004, the petitioner, Guangxi Hengxian, and Jiufa submitted additional PAI. On September 7, 2004, the petitioner submitted additional PAI and comments.

On October 22, 2004, Guangxi Hengxian and Jiufa submitted comments on the Department's surrogate value for labor which was posted on the Department's Web site on October 6, 2004.

On January 10, 2005, Guangxi Hengxian and Jiufa submitted additional surrogate values for consideration in this review.

Pre-Preliminary Results Comments

On February 4, 2005, the petitioner submitted pre-preliminary results comments on the domestic re-sale data provided by Gerber in this review (*see* February 28, 2005, Memorandum to the File from case analyst).

Period of Review

The POR is February 1, 2003, through January 31, 2004.

Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

We are preliminarily rescinding this review with respect to Guangxi Yizhou, Minhui, Nanning Runchao, Primera Harvest, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, Shenzhen Qunxingyuan, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia, because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from these companies (*see* February 28, 2005, Memorandum to the File from case analyst).

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. (*See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development (*see* April 13, 2004, Memorandum from the Office of Policy to Irene Darzenta Tzafolias). In addition, based on publicly available information placed on the record (*e.g.*, world production data), India is a significant producer of the subject merchandise. Accordingly, we have considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection (*see* Memorandum Re: 5th Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated February 28, 2005, for further discussion).

Facts Available—Green Fresh

For the reasons stated below, we have preliminarily applied partial adverse facts available to Green Fresh.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested (subject to sections 782(c)(1) and 782(e) of the Act), significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

In this review, Green Fresh reported both export price (''EP'') and constructed export price (''CEP'') sales transactions of subject merchandise during the POR. However, Green Fresh failed to provide critical information that the Department must have in order to rely on its CEP sales transactions. Specifically, in the Department's original questionnaire, we requested that Green Fresh provide the financial and sales data for its U.S. affiliates' sales transactions of subject merchandise made during the POR. In response to the Department's questionnaire, Green Fresh did not report any data for its U.S. affiliates. The Department, in its first supplemental questionnaire, requested that this respondent provide sales and audited financial data (*i.e.*, financial statements and U.S. tax returns) for its two U.S. affiliates (*i.e.*, Green Mega and Family Mutual Corporation). Although Green Fresh provided sales price data for its two U.S. affiliates in response to our first supplemental questionnaire, it also stated that it was unable to provide the other requested information at that time because it had requested an extension until December 15, 2004, to file its 2003 Federal tax returns with the U.S. Internal Revenue Service. Further, Green Fresh stated that it would provide audited financial statements and tax returns for both of its U.S. affiliates promptly after issuance. The Department, in its second supplemental questionnaire, instructed Green Fresh that it must provide the finalized financial statements and tax returns for both of its U.S. affiliates when they become available (which in this case was December 16, 2004), and Green Fresh, in response to this questionnaire, stated that it will submit the requested documentation by December 16, 2004. Green Fresh failed to provide the requested financial and tax return data applicable during the POR for its two U.S. affiliates, despite the fact that the Department issued Green Fresh two supplemental questionnaires on this matter (*see* the Department's July 29 and October 25, 2004, supplemental questionnaires). Moreover, Green Fresh did not include the requested data in its sales and cost reconciliation questionnaire response submitted on January 19, 2005.

Because most of Green Fresh's reported CEP sales transactions during this POR were first sold through Green Mega before being re-sold through Green Fresh's other U.S. affiliate (*i.e.*, Family Mutual Corporation) to the first unaffiliated U.S. customer, Green Mega's U.S. financial data is necessary to support the information reported for these CEP sales transactions. Without this requested information, the Department is unable to determine the complete universe of Green Mega's sales transactions during the POR in order to ensure that all U.S. sales of subject merchandise have been reported. Moreover, without this requested information, the Department is unable to rely on the sales data reported by Family Mutual Corporation because all of its reported CEP sales transactions originally were purchased from Green Mega before being resold to the first unaffiliated U.S. customer during the POR. Family Mutual Corporation's financial information is necessary for deriving an amount for CEP profit and indirect selling expenses. Without these data sources, the Department cannot accurately assess the reliability and completeness of Family Mutual Corporation's sales data.

For these CEP sales transactions, the Department also requested, and Green Fresh failed to provide, (1) worksheets which supported its per-unit amounts for customs duties; (2) shipment dates; and (3) selling expense data applicable for Green Mega during the POR. This information is necessary for the Department to calculate a proper dumping margin.

Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States,* Court No. 04–1131, 1174 (Fed. Cir. 2005).

Section 782(d) of the Act requires that the Department allow parties to remedy deficient submissions to the extent that time limits in the review period allow. As stated above, the Department gave Green Fresh multiple opportunities to provide the necessary financial data, including through the date by which Green Fresh, itself, indicated it would provide the data. Accordingly, the Department met its obligations under section 782(d).

As discussed above, both of Green Fresh's U.S. affiliates failed to provide critical information necessary to substantiate Green Fresh's reported CEP sales data. As a result, the Department is unable to rely on Green Fresh's CEP data. Therefore, we find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted in this segment of the proceeding with respect to Green Fresh.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Section 776(b) of the Act further provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* ''Statement of Administrative Action'' accompanying the URAA, H. Rep. No. 103–316, 870 (1994) (''SAA''). As stated above, Green Fresh indicated to the Department that it had the ability to report its U.S. affiliates' financial data and supporting documentation but it failed to do so. We therefore find that Green Fresh failed to cooperate to the best of its ability in this segment of the proceeding. As a result, pursuant to section 776(b) of the Act, we have made an adverse inference with respect to Green Fresh.

In this segment of the proceeding, in accordance with the Department's practice (*see, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as partial adverse facts available, we have assigned to Green Fresh's reported CEP sales transactions a rate of 198.63 percent, which is the PRC-wide rate. The Department's practice when selecting an adverse rate from among the possible sources of information on the record is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner.'' (*See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).) The Department is not applying total adverse facts available because, pursuant to section 782(e) of the Act, because we believe that sufficient record information established the reliability of the data which Green Fresh reported for its EP sales transactions to calculate an appropriate margin. Thus, we are only applying as partial adverse facts available a rate of 198.63 percent to Green Fresh's reported CEP sales transactions.

Facts Available—Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang

For the reasons stated below, we have applied total adverse facts available to Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang.

On August 3, 2004, Shantou Hongda informed the Department that it no longer intended to participate in this review (*see* Shantou Hongda's August 3, 2004, submission). Pursuant to sections 776(a) and (b) of the Act, the Department may apply adverse facts available if it finds a respondent has not acted to the best of its ability in cooperating with the Department in this segment of the proceeding.

The Department was unable to ascertain the accuracy of Shantou Hongda's submitted data or determine whether Shantou Hongda was entitled to a separate rate because Shantou Hongda stated that it no longer intended to participate in this review after the Department issued it a supplemental questionnaire. As a result, Shantou Hongda did not provide the Department with requested information.

With respect to Dingyuan and Zhangzhou Jingxiang, both companies failed to respond to the Department's antidumping duty questionnaire. Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang, accordingly, each failed to act to the best of its ability in cooperating with the Department's request for information in this segment of the proceeding.

As a result, none of these companies is eligible to receive a separate rate and will be part of the PRC NME entity, subject to the PRC-wide rate. Pursuant to section 776(b) of the Act, we have applied total adverse facts available with respect to the PRC-wide entity, including Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang.

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review,* 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang a rate of 198.63 percent, which is the PRC-wide rate. As noted above with respect to Green Fresh, we believe that the rate assigned is appropriate to induce the respondent to provide the Department with complete, accurate, and timely submissions in future reviews.

Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as adverse facts available (''AFA'') the highest rate from any segment of this administrative proceeding, which is a rate from the less-than-fair-value (''LTFV'') investigation. (*See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308, 8310 (February 19, 1999)).

The information upon which the AFA rate is based in the current review (*i.e.*, the PRC-wide rate of 198.63 percent) being assigned to Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang was the highest rate from the petition in the LTFV investigation. This AFA rate is the same rate which the Department assigned to Shantou Hongda in the previous review and the rate itself has not changed since the original LTFV determination. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in reviews subsequent to the LTFV investigation to the extent that the Department referred to the history of corroboration. Furthermore, no information has been presented in the current review that calls into question the reliability of this information. (*See e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and*

Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635, 54637 (September 9, 2004) (''*Mushrooms 4th AR Final Results*'')).

To further corroborate the AFA margin of 198.63 percent in this review, we compared that margin to the margins we found for the other respondents which sold identical and/or similar products. Based on our above-mentioned analysis, we find that 198.63 percent is within the margins for individual sales of identical and/or similar products reported by certain respondents in this review (*see* Memorandum Re: 5th Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Corroboration, dated February 28, 2005, for further discussion). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis as described above, we find that the margin of 198.63 percent is reliable and has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) that secondary information be corroborated (*i.e.*, that it have probative value). We have assigned this AFA rate to exports of the subject merchandise by Dingyuan, Shantou Hongda, Zhangzhou Jingxiang, and certain sales made with Green Fresh.

Affiliation—COFCO

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy (''NME'') provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding (*see See Mushrooms 4th AR Final Results*, 69 FR at 54639). For the reasons discussed below, we find that this condition has not prevented us from examining whether certain exporters and/or producers are affiliated with COFCO in this administrative review.

COFCO purchased preserved mushrooms from its producer, Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. (''Yu Xing''), which it then sold to the United States during the POR. COFCO is also linked through its parent company, China National Cereals, Oils, & Foodstuffs Import & Export Corporation (''China National''), and Xiamen Jiahua Import and Export Trading Co., Ltd. (''Xiamen Jiahua'') to two other preserved mushroom producers, COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou'') and Fujian Zishan Group Co. (''Fujian Zishan''), from which COFCO purchased preserved mushrooms but claims it did not re-sell to the U.S. market during the POR (*see* exhibit 1 of COFCO's January 21, 2005, submission).

Section 771(33)(E) of the Act provides that the Department will find parties to be affiliated if any person directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; section 771(33)(F) of the Act provides that parties are affiliated if two or more persons directly or indirectly control, or are controlled by, or under common control with any other person; and section 771(33)(G) of the Act provides that parties are affiliated if any person controls any other person.

In this case, COFCO holds a significant ownership share in Yu Xing (*see* exhibit 9 of COFCO's May 28, 2004, submission). Moreover, COFCO and Yu Xing share a company official who is on the board of directors at both companies and whose responsibilities include (1) examining and executing the implementation of resolutions passed by the board members; (2) convening shareholder meetings; and (3) providing financial reports of each company's business performance to each company's board of directors (*see* page A–10 and exhibit 7 of COFCO's May 28, 2004, submission; and exhibit 13 of COFCO's September 9, 2004, submission). Based on such record information, the Department has determined in this case that COFCO and Yu Xing are affiliated in accordance with sections 771(33)(E), (F), and (G) of the Act.

In addition, COFCO Zhangzhou (which also produced preserved mushrooms during the POR) appears to be affiliated with both COFCO and Yu Xing based on section 771(33) of the Act. Specifically, both COFCO and Yu Xing hold significant ownership shares in COFCO Zhangzhou (*see* exhibit 5 of COFCO's September 9, 2004, submission). Moreover, COFCO Zhangzhou shares with COFCO and Yu Xing the same company official who is also on the board of directors at COFCO Zhangzhou, and who also performs the same responsibilities at COFCO Zhangzhou which he performs at COFCO and Yu Xing as described above (*see* also exhibit 7 of COFCO's May 28, 2004, submission). COFCO Zhangzhou and Yu Xing also have the same general manager (*see* also exhibit 7 of COFCO's May 28, 2004, submission). For these reasons, the Department has determined in this case that COFCO, Yu Xing, and COFCO Zhangzhou are also affiliated in accordance with section 771(33)(E), (F), and (G) of the Act.

Furthermore, based on data contained in COFCO's questionnaire responses, COFCO, COFCO Zhangzhou, and Yu Xing are also affiliated, pursuant to section 771(33) of the Act, either directly or indirectly, with two other companies (*i.e.*, Xiamen Jiahua Import & Export Trading Co., Ltd. (''Xiamen Jiahua'') and Fujian Zishan), which sold and/or produced preserved mushrooms for markets other than the U.S. market during the POR. Specifically, COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua (*see* also exhibit 9 of COFCO's May 28, 2004, submission). Moreover, the same company official who is on the board of directors at COFCO, COFCO Zhangzhou, and Yu Xing is also on the board of directors at Xiamen Jiahua. In addition, this company official performs

the same responsibilities at COFCO, COFCO Zhangzhou, and Yu Xing as described above, which he performs at Xiamen Jiahua (*see* also exhibit 7 of COFCO's May 28, 2004, submission).

With respect to Fujian Zishan (*i.e.*, another producer of preserved mushrooms during the POR), we note that Xiamen Jiahua holds a significant ownership share in Fujian Zishan and that COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua (*see* also exhibit 9 of COFCO's May 28, 2004, submission). Also, we note that one of Fujian Zishan's board members also serves as the general manager at Xiamen Jiahua. Moreover, given that there are shared individuals in positions of control and/or influence between and among these companies as discussed above, we also find sufficient control exists between these entities to believe that Fujian Zishan is affiliated with China National, COFCO, COFCO Zhangzhou, Yu Xing, and Xiamen Jiahua in accordance with section 771(33)(G) of the Act. Accordingly, we find that COFCO, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) and (G) of the Act.

Collapsing—COFCO

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. (*See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12774 (March 16, 1998) and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).) To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises, Inc.* v. *United States*, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant potential for manipulation or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity (*see Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) (''*Certain Hot-Rolled Carbon Steel Flat Products*''); and *Anshan Iron & Steel Co.* v. *United States*, Slip. Op. 03–83 at 32–33 (CIT 2003) (''*Anshan*'')). We also note that the rationale for collapsing, to prevent manipulation of price and/or production (*see* 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter.

As noted above in the ''Affiliation'' section of this notice, we find a sufficient basis to conclude that COFCO, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) and (G) of the Act. Three of these entities, COFCO Zhangzhou, Fujian, Zishan, and Yu Xing produced preserved mushrooms during the POR, which would be subject to the antidumping duty order if this merchandise entered the United States since all three producers have the facilities necessary to produce preserved mushrooms (*see* factors of production data submitted by each company in COFCO's May 28, 2004, submission). Therefore, we find that the first and second collapsing criteria are met here because these producers at issue have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities.

Finally, we find that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production exists among COFCO and its affiliates for the following reasons.

First, as explained above, there is a substantial level of common ownership between and among these companies.

Second, a significant level of common control exists among these companies. Specifically, China National appointed COFCO's general manager and that this same individual was appointed by China National to be Xiamen Jiahua's executive director and serves as a board member at both COFCO Zhangzhou and Yu Xing (*see* exhibits 7 of COFCO's May 28, 2004, submission). Moreover, Xiamen Jiahua's general manager is a vice chairman on Fujian Zishan's board of directors (*see* also exhibit 7 of COFCO's May 28, 2004, submission). Moreover, Xiamen Jiahua, upon request, receives business projections from Fujian Zishan despite Fujian Zishan's claim that it does not maintain documentation which would establish the extent of Xiamen Jiahua's involvement in its activities (*see* exhibit 2 of COFCO's January 21, 2005, submission).

Third, we find that the operations of COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan, China National, and Xiamen Jiahua are sufficiently intertwined. Specifically, China National consolidates COFCO's and Xiamen Jiahua's financial data in its financial statements as well as issues a business plan which provides guidance to its affiliated companies (*e.g.*, COFCO and Xiamen Jiahua) through the use of export targets based on the general category of product (*i.e.*, foodstuffs) listed in the business plan (*see* the public version of the Department's China National/COFCO July 6, 2004, verification report at 8 and 12 issued in *Mushrooms 4th AR Final Results*, which has been placed on the record of this review). Furthermore, there are significant sales transactions between and among the above-mentioned affiliates which serve as additional

evidence that their operations are intertwined. For example, COFCO purchased mushroom products from all three of its affiliated producers during the POR of this review (*see* page A–2 of COFCO's May 28, 2004, submission and exhibit 1 of COFCO's January 21, 2005, submission). However, COFCO decided only to export to the U.S. market mushroom products produced by its affiliate Yu Xing (*see* exhibit 13 of COFCO's May 28, 2004, submission). In addition, even though Fujian Zishan could have exported all of its mushroom products (*i.e.*, subject and non-subject mushroom products) independently to the United States, it chose not to export subject mushroom products to the U.S. market during the POR (*see* page 13 of COFCO's September 9, 2004, submission). Similarly, Xiamen Jiahua was able to purchase mushroom products for export from both Fujian Zishan and COFCO Zhangzhou, but decided not to sell those products to COFCO for export to the United States. Rather, it chose to export these products on its own to third country markets if they were in-scope merchandise (*see* page 12 of COFCO's September 9, 2004, submission). In addition, since the LTFV investigation, COFCO has shifted its source of supply among these affiliates. In the LTFV investigation of this proceeding, Fujian Zishan's factors data was initially used for purposes of determining COFCO's dumping margin (*see Notice of Final Determination of Sales at Less Than Fair Market Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72258 (December 31, 1998)). However, during the POR, COFCO only purchased its preserved mushrooms from its other affiliated producer, Yu Xing, for sale to the United States.

Therefore, based on the above-mentioned reasons and the guidance of 19 CFR 351.401(f), we have preliminarily collapsed COFCO and its affiliates noted above because there is a significant potential for manipulation of production and/or sales decisions between these parties. Consequently, we have considered COFCO and the five affiliates mentioned above as a collapsed entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate. This decision is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity and the level of control between/among affiliates and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding (*see* ''Separate Rates'' section below for further discussion).

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in this review, Gerber, is wholly owned by companies located outside the PRC. Thus, for Gerber, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control. (*See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), which cites *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001), which cites *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong)).

Two respondents, Green Fresh and Guangxi Yulin, are joint ventures of PRC entities. Two respondents, Jiufa and XITIC, are joint-stock companies in the PRC. Another respondent, Guangxi Hengxian, is a limited liability company.

The remaining respondent, COFCO, is owned by its affiliate China National, an exporter, which is owned by ''all of the people.'' COFCO also owns in part two preserved mushroom producers, COFCO Zhangzhou and Yu Xing. (Yu Xing has export rights but has never directly exported). In addition to COFCO, China National owns in part Xiamen Jiahua (*i.e.*, a preserved mushroom exporter) and Xiamen Jiahua owns in part Fujian Zishan (*i.e.*, another preserved mushroom producer which also has export rights). As discussed above in the ''Collapsing'' section of this notice, we have preliminarily considered COFCO and the five affiliates mentioned above as a collapsed entity.

Thus, a separate-rates analysis is necessary to determine whether the export activities of each of above-mentioned respondents (including COFCO's collapsed entity as a whole) is independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996) (''*Bicycles*'').) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

COFCO's collapsed entity, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the 1994 ''Foreign Trade Law of the People's Republic of China;'' the ''Company Law of the PRC,'' effective as of July 1, 1994; and ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988. In other cases involving products from the PRC,

respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC''; and the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''). (*See* February 28, 2005, memorandum to the file which places the above-referenced laws on the record of this proceeding segment.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by ''all of the people'' absent proof on the record to the contrary. (*See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995).)

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide*, 59 FR at 22587, and *Furfuryl Alcohol*, 60 FR at 22544.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide*, 59 at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

The affiliates in COFCO's collapsed entity (where applicable), Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. As a result, there is a sufficient basis to preliminarily determine that each respondent listed above (including COFCO's collapsed entity as a whole) has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates. Moreover, with respect to the affiliates included in COFCO's collapsed entity, we have assigned to all of them the same antidumping rate in these preliminary results for the above-mentioned reasons.

Normal Value Comparisons

To determine whether sales of the subject merchandise by COFCO and its affiliates, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC to the United States were made at prices below normal value (''NV''), we compared each company's EPs or CEPs to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice, below.

Export Price

For COFCO, Gerber, Green Fresh, Guangxi Yulin, Jiufa, and XITIC, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which CEP was not otherwise indicated. (*See* ''Facts Available—Green Fresh'' section above for the Department's reason for resorting to facts available with respect to Green Fresh's reported CEP sales transactions). We made the following company-specific adjustments:

A Green Fresh

We calculated EP based on packed, CNF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, and international freight in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below for further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used Indian truck freight rates published in *Chemical Weekly* and distance information obtained from the following Web sites: *http://www.infreight.com*, and *http://www.sitaindia.com/Packages/CityDistance.php*. To value foreign brokerage and handling expenses, we relied on 1999–2000 public information reported in the LTFV investigation on certain hot-rolled carbon steel flat products from India (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (October 3, 2001)). For international freight (*i.e.*, ocean freight), we used the reported expenses because Green Fresh reportedly used only market-economy freight carriers and paid for those expenses in a market-economy currency (*see, e.g., Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)). We also revised Green Fresh's reported per-unit packed weights used to derive PRC movement expenses (*see* Green Fresh calculation memorandum).

B. COFCO, Guangxi Yulin, and XITIC

We calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in Chinese currency (*i.e.*, renminbi), we based these charges on surrogate rates from India. (*See* discussion above for further details.) Although COFCO claims the Department should not deduct the foreign inland freight, brokerage, and

handling expenses from its reported U.S. prices because its affiliated producer, Yu Xing and not COFCO, incurred these expenses, we have continued to deduct these expenses incurred by Yu Xing, from COFCO's reported U.S. prices. This deduction complies with the requirements of section 772(c) the Act that instructs the Department to deduct expenses from the U.S. gross unit price if a respondent or its affiliated producer incurs expenses associated with transporting to and/or clearing the subject merchandise through the country of exportation. *See Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying Issues and Decision Memorandum at Comment 10.

COFCO claims that its affiliated producer, Yu Xing, did not incur an expense for the glass jars used to export the subject merchandise to the United States because COFCO's U.S. customers provided this item to Yu Xing free-of-charge. In the Department's supplemental questionnaire, we specifically requested COFCO to provide documentation (*i.e.*, sample invoice, sales contract, and/or purchase agreement) to support its claim. Rather than providing any of the requested documentation in support of its claim that it incurred no expense for this item, COFCO provided only alleged (not sale) customer correspondence.

Because COFCO has not sufficiently supported its claim that its U.S. customer contracted with a PRC jar producer, and that this producer had indeed delivered jars to Yu Xing in a certain quantity on a certain date, free-of-charge, the Department has not modified the U.S. price of those transactions to reflect the U.S. customer's reported expenditures for the preserved mushrooms and the jars. Because the details of the alleged jars transactions are virtually nonexistent on the record, and the link between these jars and the production of the subject merchandise has not been sufficiently established, the Department has preliminarily found that the record does not support such an adjustment to COFCO's reported U.S. prices. This preliminary decision on this matter is consistent with *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review*, 69 FR 10402, 10407 (March 5, 2004). As the Department has an affirmative obligation to prevent the manipulation of its calculations through unsubstantiated claims on the record. It would not be reasonable at this time to grant COFCO the modification to its calculations without substantial evidence on the record to support its claim.

Finally, we also revised COFCO's, Guangxi Yulin's and XITIC's reported per-unit packed weights used to derive PRC movement expenses (*see* COFCO, Guangxi Yulin, and XITIC calculation memoranda).

C. Gerber and Jiufa

We calculated export price based on packed, CIF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses, international freight (*i.e.*, ocean freight), U.S. brokerage and handling charges, U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees), and U.S. demurrage charges in accordance with section 772(c) of the Act. To value foreign inland train charges, we used price quotes published in the July 2001 *Reserve Bank of India Bulletin*. Because foreign inland trucking charges, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) For international freight, we used the reported expenses because each respondent used a market-economy freight carrier and paid for the expenses in a market-economy currency. We also revised the Gerber's and Jiufa's reported per-unit packed weights used to derive PRC movement expenses (*see* Gerber and Jiufa calculation memoranda).

Constructed Export Price

For Guangxi Hengxian we calculated CEP in accordance with section 772(b) of the Act because the U.S. sale was made for the account of Guangxi Hengxian by its subsidiary in the United States, Sino-Trend, Inc. (''Sino-Trend''), to an unaffiliated purchaser in the United States.

We based CEP on a packed, ex-U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (*i.e.*, ocean freight), U.S. brokerage and handling charges, U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees), and U.S. demurrage charges. As all foreign inland freight and foreign brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we valued these services using the Indian surrogate values discussed above. For international freight, we used the reported expenses because the respondent used a market-economy freight carrier and paid for the expenses in a market-economy currency (*see* Guangxi Hengxian calculation memorandum for further discussion).

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses), indirect selling expenses, and inventory carrying expenses incurred in the United States. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* Section 773(c)(3) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China,* 69 FR 75294, 75300 (December 16, 2004) (*''Chlorinated Isocyanurates''*). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. *See Factor Valuation*

Memo for a more detailed explanation of the methodology used in calculating various surrogate values.

Pursuant to section 776(a)(2)(D) of the Act, the Department used facts otherwise available to value certain factors of production for which Gerber, Green Fresh, Guangxi Yulin and Yu Xing (*i.e.,* COFCO's affiliated producer) failed to provide consumption data in response to supplemental questionnaires issued by the Department to these companies.

Specifically, Green Fresh failed to provide, as requested, a consumption factor for the water it used to grow fresh mushrooms. Although this respondent claimed it obtained the water free of charge from a nearby river and was unable to determine the amount of water it used to grow its fresh mushrooms, the Department was clear in its supplemental questionnaires that the respondent is required to report the requested information. *See Pacific Giant* v. *United States,* 223 F. Supp. 2nd 1336, 1346 (CIT 2002) (affirming the Department's valuation of water). Green Fresh did not have to provide an exact factor, but like the other respondents, it could have provided a theoretical usage amount for this input (*i.e.,* a calculated factor based on the land used to grow fresh mushrooms, the amount of water used per hectare, etc.).

In addition, although this respondent argues that valuing this factor would result in double counting its costs associated with water usage in the fresh mushroom production process if the Department also valued the electricity it used to pump the water from the nearby river, we find that Green Fresh did not provide sufficient evidence in its questionnaire responses to demonstrate that its reported electricity usage for growing fresh mushrooms was only limited to water pumping activities. Such information is necessary for determining the normal value of Green Fresh's reported U.S. sales. Thus, with respect to this factor, we have determined that Green Fresh did not act to the best of its ability in providing us with the requested information. Accordingly, pursuant to section 776(b) of the Act, as adverse facts available, the Department has used the highest per-unit water factor for fresh mushroom production (based on the per-unit consumption data for this input reported by the other respondents in this review) for purposes of valuing the costs associated with this input utilized by Green Fresh.

Section 773(c)(3) of the Act states that ''the factors of production utilized in producing merchandise include, but are not limited to the quantities of raw materials employed.'' Therefore, the Department is required under the Act to value all inputs (including inputs for which the respondent claims were provided to it purportedly free of charge). As explained in the ''Export Price'' section above, COFCO did not sufficiently support its claim that its U.S. customer provided Yu Xing the jars it used free-of-charge. For this reason, we have not adjusted COFCO's reported U.S. prices to include the value of jars for certain sales of preserved mushrooms in these preliminary results. Despite the fact that we have not made the above-referenced adjustment to COFCO's U.S. prices reported for sales of the subject merchandise contained in jars, section 773(c)(3) of the Act nevertheless requires the Department to value each factor of production used to produce the subject merchandise. Accordingly, for these preliminary results, the Department has valued the jar usage amounts reported by Yu Xing by using a surrogate value (*see Factor Valuation Memo*).

As for Gerber, Guangxi Yulin, and Yu Xing (*i.e.,* COFCO's affiliated producer), these respondents failed to provide, as requested, a consumption factor for the soil which they used to grow fresh mushrooms. Although these respondents claimed that they did not purchase the soil used to grow fresh mushrooms and do not maintain consumption records for this input, we find again, the respondents could have provided a theoretical usage amount for this input just as many respondents did with respect to water, based on the land used to grow fresh mushrooms, height of the top soil used in mushroom sheds, and other factors. Despite these respondents' claims that the soil should not be treated as a direct material because this input is not incorporated in the intermediate product (*i.e.,* fresh mushrooms), we consider soil an integral part of the fresh mushroom process because without this input, the fresh mushrooms cannot be produced. This information is necessary for determining the normal value of COFCO's, Gerber's, and Guangxi Yulin's reported U.S. sales. We have determined pursuant to section 776(b) of the Act that companies did not act to the best of their ability in providing the factor data for this input. Therefore, as adverse facts available, the Department has used the highest per-unit soil factor (based on the per-unit consumption data for this input reported by the other respondents in this review) for purposes of valuing the costs associated with this input utilized by Gerber, Guangxi Yulin, and Yu Xing (*i.e.,* COFCO's affiliated producer). *See* company-specific calculation memoranda for further discussion.

With respect to other factors data submitted by COFCO's affiliated producer, Fujian Zishan, and Guangxi Hengxian, we made adjustments to their submitted data which we deemed were necessary based on comments submitted by the petitioner in this review (*see* COFCO and Guangxi Hengxian calculation memoranda for further discussion).

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except where noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12442 (March 13, 1998). As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). Due to the extensive number of surrogate values it was necessary to assign in this investigation, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, *see Factor Valuation Memo.*

Except where discussed below, we valued raw material inputs using February 2003-January 2004 weighted-average Indian import values derived from the *World Trade Atlas* online (*''WTA''*) (*see also Factor Valuation Memo*). The Indian import statistics we obtained from the *WTA* were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POR. Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the applicable average exchange rate for India for the POR. The average exchange rate was based on exchange rate data from the Department's Web site. Where we could not obtain publicly available

information contemporaneous with the POR with which to value factors, we adjusted the surrogate values for inflation using Indian wholesale price indices (''WPIs'') as published in the International Monetary Fund's *International Financial Statistics. See Factor Valuation Memo.*

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to conclude that there is reason to believe or suspect all exports to all markets from these countries are subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic,* 61 FR 66255 (February 12, 1996), and accompanying *Issues and Decision Memorandum* at Comment 1.

Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

Surrogate Valuations

To value fresh mushrooms and rice straw, we used an April 2002-March 2003 average price based on purchase data contained in the 2003–2004 financial report of Premier Explosives Ltd. (''Premier''). *See Mushrooms 4th AR Final Results,* 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 12.

To value cow manure and general and/or wheat straw, we used an average price based on data contained in the 2003–2004 financial reports of Agro Dutch Foods, Ltd. (''Agro Dutch'') and Flex Foods Ltd. (''Flex Foods'') (*i.e.,* two Indian producers of the subject merchandise) because we could not obtain any other Indian surrogate values for these inputs.

To value spawn and chicken manure, we used an average price based on data contained in the 2003–2004 financial reports of Agro Dutch, Flex Foods Ltd., and Premier. We did not use the spawn value data obtained from the National Research Center for Mushroom (which was established by the Indian Council of Agricultural Research), because data on the record indicates that this research center is fully financed by the Indian government, and its spawn price is not determined by market forces.

For those respondents which used mother spawn, we also used the average spawn price to value mother spawn from Agro Dutch, Flex Foods, and Premier, because we were unable to obtain publicly available information which contained a price for mother spawn.

To value rice straw, we used price data contained in Premier's 2003–2004 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value wheat, we used price data contained in Flex Foods' 2003–2004 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value super phosphate, we used price data contained in Flex Foods' 2002–2003 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value soil, we used July 2003 price data from two U.S. periodicals, *Mt. Scott Fuel* and *Interval Compost,* rather the data contained in the Indian Government's Central Public Works Department publication, because the excerpt from this publication only appears to provide a rate for services (*e.g.,* supplying and stacking earth at site) rather than a surrogate value for soil. Moreover, we did not use the value for ''pressed mud'' from Flex Foods'' 2003–2004 financial report to value this input, because given the magnitude of that value, we cannot conclude that it is representative of the value for soil used to grow mushrooms versus other applications (*e.g.,* construction of sheds). *See Mushrooms 4th AR Final Results,* 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 13.

For disodium stannous citrate, we used a February 2003–January 2004 average import value for sodium citrate from the *World Trade Atlas* because we were unable to obtain a more specific value for this input.

To value monosodium glutamate, we used a January 2003–December 2003 weighted-average value based on imports of these inputs into the Indonesia from *WTA,* because we had reason to believe or suspect that a significant amount of imports of this input into India during the POR were subsidized.

For those respondents which only purchased tin cans used in the production of preserved mushrooms during the POR, we valued tin cans using the can-purchase-specific price data from the May 21, 2001, public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit, can-size-specific prices using the petitioner's methodology contained in its August 16, 2004, PAI submission.

For those respondents (*i.e.,* COFCO) which both purchased and produced tin cans during the POR we valued tin cans using the actual price data from the supplemental questionnaire response submitted by Agro Dutch Foods, Ltd. (''Agro Dutch'') in the 3rd antidumping duty administrative review of certain preserved mushrooms from India.

Although Jiufa reported its affiliate's factors used to produce cans, we did not value the factors it reported for producing cans because a collapsing analysis pursuant to 19 CFR 351.401(f) was not warranted in this instance. Instead, we valued this company's reported can factor.

To value water, we used the water tariff rate for the greater Municipality of Mumbai, India (''Mumbai Municipality''), that was formerly available on the Municipal Corporation of Greater Mumbai's Web site and was used in the *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). *See also http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm.* The latest available data covers the period from February 2001 through November 2002. The cost of water during this period ranged from 1.0 to 35.00 Rs/1,000 liters (1,000 liters of water is equivalent to 1 cubic meter of water and 1 cubic meter of water is equivalent to 1 metric ton of water). We used the highest value from the water price range data from the Mumbai Municipality.

We valued electricity using the 2000 total average price per kilowatt hour for ''Electricity for Industry'' as reported in the International Energy Agency's (''IEA'' 's) publication, *Energy Prices and Taxes, Fourth Quarter, 2003.*

We added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line.*

To value diesel fuel, we used 2002 Indian price data from IEA's *Key World Energy Statistics.*

To value steam, we used January–June 1999 Indian price data from *PR Newswire Association Inc.*

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for the PRC published by Import Administration on our website. The source of the wage rate data is the *Yearbook of Labour Statistics 2002*, published by the International Labour Office (''ILO''), (Geneva: 2002), Chapter 5B: Wages in Manufacturing. See the Import Administration Web site: *http://ia.ita.doc.gov/wages/02wages/02wages.html.* Although Guangxi Hengxian and Juifa question the Department's labor rate calculation methodology in using per-capita Gross National Income (''GNI'') and wage-rate information available from the ILO web site for certain countries in its regression analysis, we have continued to employ our long-established methodology for determining the wage rate for the PRC. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying *Issues and Decision Memorandum* at Comment 23.

Certain respondents (*e.g.*, COFCO, Guangxi Yulin) reported certain by-products (*i.e.*, recovered tin plate, recovered copper wire, and mushroom scrap) in producing the subject merchandise which each either re-sold or re-used to produce the subject merchandise during the POR. Therefore, in those instances where the respondent provided documentation to support its by-product claim and we obtained appropriate surrogate values for those by-products, we allowed a recovery/by-product credit. Because we could not obtain an appropriate surrogate value for mushroom scrap, we did not value this by-product in the preliminary results. Our treatment of by-products in this proceeding is in accordance with the Department's practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001), and accompanying *Issues and Decision Memorandum* at Comment 3.

To value packing materials, we used February 2003–January 2004 weighted-average Indian import values derived from *WTA.* Although Jiufa reported its affiliate's factors used to produce cartons, we did not value the factors it reported for producing cartons because a collapsing analysis pursuant to 19 CFR 351.401(f) was not warranted in this instance. Instead, we valued this company's reported carton factor.

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the October 2003–January 2004 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: *http://www.infreight.com* and *http://www.sitaindia.com/Packages/CityDistance.php.*

To value PRC inland freight for inputs shipped by train, we used price quotes published in the July 2001 *Reserve Bank of India Bulletin.*

To value factory overhead (''FOH'') and selling, general & administrative (''SG&A'') expenses, and profit, we used data from the 2003–2004 financial reports of Agro Dutch Foods, Ltd. (''Agro Dutch'') and Flex Foods Ltd. (''Flex Foods''). These Indian companies are producers of the subject merchandise based on data contained in each Indian company's financial reports.

We did not use the 2003–2004 financial data obtained for Premier to value factory overhead, SG&A or profit, because although this company produces the subject merchandise, its operations, unlike Agro Dutch and Flex Foods, are not limited to the production of mushrooms and other similar agricultural products. *See Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 8.

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, *see* the *Preliminary Results Valuation Memorandum.*

Verification

In accordance with section 782(i)(2) of the Act and 19 CFR 351.307, the Department will conduct a complete and thorough verification of a number of respondents in this review, including, but not limited to, Gerber, Green Fresh (with respect to its EP sales and factors of production data used in our analysis), Jiufa, and XITIC. With respect to Gerber and Green Fresh, we will ascertain whether they continued to engage in practices which resulted in the application of adverse facts available in the prior two administrative reviews.

Preliminary Results of the Review

We preliminarily find that the following margins exist for the following exporters under review during the period February 1, 2003, through January 31, 2004:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC MANDATORY RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
China Processed Food Import & Export Company	38.25
Gerber Food (Yunnan) Co., Ltd	0.00
Green Fresh Foods (Zhangzhou) Co., Ltd	153.93
Guangxi Hengxian Pro-Light Foods, Inc	49.98
Guangxi Yulin Oriental Food Co., Ltd	8.92
Shandong Jiufa Edible Fungus Corporation Ltd	65.57
Xiamen International Trade & Industrial Co., Ltd	8.69
PRC-Wide Rate	198.63

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held on May 16, 2005.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1)The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than May 2, 2005, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than May 9, 2005, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review,

including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For certain respondents for which we calculated a margin, we do not have the actual entered value because they are either not the importers of record for the subject merchandise or were unable to obtain the entered value data for their reported sales from the importer of record. For these respondents, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer-specific ad valorem ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC, will be the rates determined in the final results of review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, no cash deposit will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding (*e.g.*, Guangxi Yizhou, Minhui, Nanning Runchao, Primera Harvest, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, Shenzhen Qunxingyuan, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia); (3) the cash deposit rate for the PRC NME entity (including Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter.

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

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–925 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar From India

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

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Chandan Steel Ltd. This review covers sales of stainless steel bar from India to the United States during the period February 1, 2003, through January 31, 2004. We have preliminarily found that sales have been made below normal value by Chandan Steel Ltd. We invite interested parties to comment on these preliminary results.

We are also rescinding this administrative review with respect to Ferro Alloys Corp., Ltd.; Isibars Ltd.; Mukand, Ltd.; Venus Wire Industries Ltd; and the Viraj Group, Ltd. (Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; and Viraj Impoexpo, Ltd.).

DATES: *Effective Date:* March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Melanie Brown or Julie Santoboni, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4987 and (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2004, the Department of Commerce (the Department) published a notice in the **Federal Register** providing opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar (SSB) from India. *See Notice of Opportunity to Request Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 69 FR 5125 (February 3, 2004).

The Department received requests for an administrative review from Chandan Steel Ltd. (Chandan); Ferro Alloys Corp., Ltd. (FACOR); Isibars Ltd. (Isibars); Mukand, Ltd. (Mukand); Venus Wire Industries Limited (Venus); and Viraj Alloys, Ltd., Viraj Forgings, Ltd.

and Viraj Impoexpo, Ltd. (collectively referred to as the Viraj Group) on February 27, 2004.

The Department initiated an administrative review of the antidumping duty order on SSB from India for the above-named companies on March 26, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 15788 (March 26, 2004). We issued questionnaires to each of these companies on March 30, 2004.

On April 15, 2004, the petitioners (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC)) requested that the Department conduct a verification of all the respondents. Venus, Mukand, FACOR, Isibars, and the Viraj Group withdrew their requests for an administrative review on April 19, 2004, and May 3, 2004. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

On May 3, 2004, we received a response to section A of the Department's questionnaire from Chandan. Chandan reported that it only had export sales of stainless steel bright bar (SSBB), and that its home market sales of stainless steel hot-rolled bar (SSHR) were less than 5 percent of the volume of its U.S. sales of SSBB. In addition, Chandan reported preliminary data on SSB sales made to its largest third-country markets. On May 18, 2004, Chandan submitted a response to sections B and C of the Department's questionnaire, containing complete sales databases for Chandan's largest third-country markets: Australia, Belgium, and Brazil. On June 14, 2004, the petitioners filed comments on Chandan's sections A–C responses, and recommended that the Department select Belgium as the third-country comparison market for normal value (NV), alleging that Chandan made more sales to Belgium than to Australia of merchandise identical to merchandise it sold in the United States.

On June 29, 2004, we issued a supplemental questionnaire to Chandan requesting the quantity and value of its home market sales of SSBB and SSHR, and the certifications required by 19 CFR 351.303(g). We received Chandan's response on July 6, 2004. In that response, Chandan reported that its home market sales of SSHR were of defective merchandise and that it did not sell defective merchandise in its export markets. On July 12, 2004, the Department issued an additional supplemental questionnaire requesting that Chandan revise its home market data and report its home market sales of SSHR. We received Chandan's revised home market sales data on July 27, 2004.

On August 11, 2004, in response to Chandan's revised home market data, the petitioners alleged that Chandan's home market sales of SSHR were unsuitable for comparison purposes because the bar was defective and fundamentally different from the bar sold in the United States. As a result, the petitioners reiterated their recommendation that Belgium be selected as the comparison market. Simultaneously, they made a timely allegation that Chandan's third-country sales were made below the cost of production (COP).

On August 17, 2004, Chandan requested that the Department exclude certain stainless steel flat-bars from the antidumping duty order. The petitioners submitted comments in opposition to Chandan's scope exclusion request on August 19, 2004.

On September 24, 2004 we selected Australia as the third-country comparison market after determining that Chandan's home market was not viable. *See* the September 24, 2004, memorandum to Susan Kuhbach from Team entitled, ''*Selection of Comparison Market for Chandan'' (Comparison Market Memo*). We chose Australia because it was the largest market by volume and the composition of merchandise sold to Australia provided a greater number of similar product matches for sales to the United States.

Also, on September 24, 2004, the Department found that, because of the complexity of assessing home market viability, choosing the appropriate third-country market, and the late filing of a cost allegation by the petitioners, it was not practicable to complete this review within the time period prescribed. Accordingly, we extended the time limit for completing the preliminary results of this review to no later than February 28, 2005, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2). *See Stainless Steel Bar from India; Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review,* 69 FR 57265 (September 24, 2004).

We found that the petitioners' allegation of sales below cost provided a reasonable basis to believe or suspect that Chandan's comparison market sales were made at prices below COP, within the meaning of section 773(b) of the Act. Consequently, on October 5, 2004, we initiated a COP investigation of Chandan's comparison market sales during the period of review (POR). *See* the October 5, 2004 memorandum to Susan Kuhbach from Team entitled, ''*Antidumping Duty Administrative Review on Stainless Steel Bar from India: Allegation of Sales Below the Cost of Production for Chandan Steel, Ltd.*'' Accordingly, we notified Chandan that it must respond to section D of the antidumping duty questionnaire.

On October 1, 2004, we issued an additional supplemental questionnaire to Chandan addressing issues raised by sections A–C of its response. We received Chandan's supplemental A–C and section D questionnaire responses on November 12, 2004. Chandan's November 12, 2004 response was severely deficient; as a result, we requested a revised submission that Chandan submitted on November 16, 2004.

In the November 16, 2004 submission, the law firm that had been certifying and filing Chandan's submissions stated that it did not represent Chandan in the current administrative review. On November 22, 2004, we requested clarification of the relationship between the law firm and Chandan in the current proceeding. *See* November 22, 2004 letter from Ryan Langan, Acting Program Manager, AD/CVD Enforcement, Office 1 to Mr. Peter Koenig. Subsequently, we determined that the law firm had failed to file a formal notice of appearance and an official request for adminsitrative protective order (APO) access. The Department afforded the law firm an opportunity to make such filings, but the Department received no response. Therefore, the Department ceased all correspondence with the law firm and corresponded directly with Chandan.

The Department issued additional supplemental questionnaires in December 2004 and January 2005. We received responses between December 2004 and February 2005.

On January 28, 2005, the petitioners commented on Chandan's January 5, 2005, response. In those comments, the petitioners noted the following problems: (1) Failure to provide adequate cost information on a finish-specific basis; (2) failure to provide clear information about Chandan's affiliate in the United States, Chandan USA; and (3) failure to provide importer of record and entered value information. The petitioners argued that, due to these deficiencies, the Department should either use partial facts available, adverse facts available or the Belgian sales as the

comparison market values. On February 18, 2005, we received comments from the petitioners regarding Chandan's February response.

Scope of the Order

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

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

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

Scope Exclusion

On August 9, 2004, we received a scope exclusion request from Chandan. In that request, Chandan sought to exclude certain stainless steel flat-bars from the scope. Specifically, Chandan sought to exclude stainless steel hot rolled flat-bars with sizes ranging from ¾″ x ⅛″ to 8″ x 3″ (19.05 mm x 3.18 mm to 203.20 mm x 76.20 mm), with a uniform solid cross section the length of the bar in rectangular shape. Chandan explained that the bars were not manufactured in the United States and that the stainless steel flat-bar applications were different from those of stainless steel bar.

On August 19, 2004, the petitioners requested that the Department reject Chandan's exclusion request because Chandan failed to prove the necessary elements for a scope exclusion ruling as outlined in 19 CFR 351.225(c). Furthermore, the petitioners provided evidence from domestic producers of stainless steel hot rolled flat-bars that such bars are produced in the United States, in direct contradiction to Chandan's claims.

On February 11, 2005, we returned Chandan's scope exclusion request, with instructions to refile, because it failed to follow the scope exclusion requirements outlined in section 351.225(c) of the Department's regulations. *See* February 11, 2005, letter from Ryan Langan, Acting Program Manager, AD/CVD Enforcement, Office 1 to Chandan Steel Ltd., in c/o Mr. Pravin Jain. Specifically, Chandan failed to provide, as required by section 351.225(c)(1) of the Department's regulations, a detailed description of the product, its current HTSUS numbers and technical uses, citations to any applicable statutory authority, and factual information supporting the request.

Period of Review

The period of review is February 1, 2003, through January 31, 2004.

Partial Rescission of Review

As noted above in the ''Background'' section of this notice, Venus, Mukand, FACOR, Isibars, and the Viraj Group withdrew their requests for an administrative review on April 19, 2004, and May 3, 2004. Because the petitioners did not request an administrative review for any of these companies and the requests to withdraw were made within the time limit specified under 19 CFR 351.213(d)(1), we are rescinding this administrative review as it pertains to these companies.

Fair Value Comparisons

To determine whether sales of SSB by Chandan to the United States were made at less than NV, we compared export price (EP) and constructed export price (CEP), as appropriate, to the NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

When making comparisons in accordance with section 771(16) of the Act, we considered all products produced by Chandan as described in the ''Scope of the Order'' to be the foreign like product. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Chandan in the following order: general type of finish, grade, remelting process, type of final finishing operation, shape, and size.

Export Price and Constructed Export Price

Chandan reported that all of its sales of SSB to the United States during the POR were EP sales. According to Chandan, these sales were made to unaffiliated customers in the United States prior to the date of importation. However, the record is unclear with respect to Chandan's U.S. sales distribution processes to these companies, the identity of all the companies involved, and the relationship, if any, to Chandan. The record does indicate, however, that Chandan made certain U.S. sales through an affiliate in the United States, *i.e.*, Chandan USA, to unaffiliated customers. In addition, Chandan reported extra expenses for the sales made through Chandan USA. These extra expenses appear to be incurred by an unaffiliated party in the United States and are related to that party's activities in the United States on behalf of Chandan. According to information provided by Chandan, the unaffiliated party is later reimbursed for those extra expenses by Chandan through Chandan USA.

For these preliminary results, we are treating sales through Chandan's U.S. affiliate as CEP sales. As noted above, Chandan has an affiliated entity (Chandan USA) in the United States that appears to be the entity that makes the first sale in the United States to an unaffiliated customer, and Chandan appears to incur expenses that are related to economic activity in the United States. We intend to seek further information about these sales prior to our final results of review.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, for those sales Chandan made directly to unaffiliated purchasers in the United States prior to the date of importation. We based EP on packed, CFR prices to unaffiliated purchasers in the United States.

We made deductions from the EP starting price, where appropriate, for foreign inland freight from the plant/warehouse to the port of export, marine insurance, and international freight in accordance with section 772(c)(2) of the Act.

Constructed Export Price

As stated above, we treated those sales made through Chandan's U.S. affiliate, Chandan USA, as CEP sales. We calculated CEP in accordance with 772(b) of the Act, based on packed, CIF and CFR prices to Chandan's unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant/warehouse to the port of export, marine insurance, and international freight. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity in the United States including: commissions, credit expenses, and extra expenses incurred in the United States. Additionally, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

Selection of Comparison Market

Because Chandan's home market sales were of defective merchandise, we based NV on sales to one of Chandan's third country markets. *See Comparison Market Memo.* In accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404, we selected Australia as the third-country comparison market.

Citing 19 CFR 351.404(e)(1), the petitioners have argued that Belgium, not Australia, is the most appropriate third-country comparison market. The petitioners claim that the Department erred in selecting Australia as the third-country comparison market when it determined the number of potential matches in the Australian market by examining size ranges, rather than the number of matches of identical size. The petitioners assert that using a specific size would result in a higher percentage of identical matches in Belgium. Furthermore, the petitioners argue that the Department must calculate Chandan's NV using identical model matches because, when looking at the most recent third-country databases supplied by Chandan, there still are significant differences regarding the product characteristics. The petitioners state that, assuming that size ranges are an adequate measure for product matching, there are significantly more similar sales matches based on grade, shape, finish, and diameter between sales to the United States and to Belgium than there are between sales to the United States and sales to Australia or Brazil.

We considered all the criteria under 19 CFR 351.404(e) in determining the appropriate third-country comparison market including: (1) Whether the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) whether the volume of sales to a particular third country is larger than the volume of sales to other third countries; and (3) other factors as the Secretary considers appropriate.

We found that Australia is Chandan's largest third-country market by volume. When we compared the sales made to the United States to those made to the third-country markets reported by Chandan, we were able to identify a greater number of similar matches of U.S. sales to Australian sales, than to Belgian sales. This is the same approach the Department uses in its margin analysis. Therefore, in accordance with 19 CFR 351.404(e), we have chosen Australia as the appropriate third-country market.

Cost of Production

As stated above in the ''Background'' section of this notice, the petitioners submitted a below-cost allegation. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that Chandan's third-country sales were made at prices below the COP, pursuant to section 773(b)(2)(A)(i) of the Act. *See* the October 5, 2004 memorandum from Team to Susan Kuhbach entitled ''*Allegation of Sales Below the Cost of Production for Chandan Steel, Ltd.*'' As a result, we initiated an investigation to determine whether Chandan made comparison market sales during the POR at prices below their COPs.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), and interest expenses. For purposes of these preliminary results, we have relied on the COP data submitted by Chandan. Before the final results, we intend to seek additional information from Chandan about its finishing costs.

2. Test of Comparison Market Prices

On a product-specific basis, we compared the weighted-average COP to the comparison market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The comparison market prices were exclusive of any applicable movement charges, commissions, indirect selling expenses, and packing expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities; and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) and (2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Chandan's comparison market sales were at prices less than the COP. In addition, such sales were made within an extended period of time and did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining above-cost sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, (*i.e.*, NV based on either home market or third country prices [1]) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* 62 FR at 61733.

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

Chandan reported one level of trade in both U.S. and third-country markets. We found no difference between the relevant selling activities of the CEP LOT and the third-country LOT. In addition, we found that the only difference in selling activities between the third-country LOT and the EP LOT was that there were commissions incurred on some U.S. sales but none on third-country sales. This difference was not substantial. Therefore, we find that selling activities were performed at the same relative level of intensity in both markets, and that the EP and CEP levels of trade were the same as the third-country LOT. Accordingly, all sales comparisons are at the same LOT for Chandan and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Calculation of Normal Value

Price to Price Comparisons

We based NV on packed FOB, CIF, and CFR prices to Chandan's third-country unaffiliated customers. We made deductions from the starting price, where appropriate, for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, including: Foreign inland freight from the plant/warehouse to the port of export, marine insurance, and international freight.

We also reduced the starting price for comparison market packing costs incurred on the comparison market sales, in accordance with section 773(a)(6)(B)(i), and increased NV to include U.S. packing expenses in accordance with section 773(a)(6)(A). We made circumstance-of-sale adjustments for credit expenses, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made an adjustment to NV to account for commissions paid on some U.S. sales but not on sales in the third country, in accordance with 19 CFR 351.410(e). As the offset for U.S. commissions, we used third-county indirect selling expenses to the extent of the lesser of the commission or the indirect selling expenses. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we intend to verify all information to be used in making our final results.

Preliminary Results of Review

We preliminarily find the following weighted-average dumping margin:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chandan Steel Ltd	10.28

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rate

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries. According to 19 CFR 351.212(b)(1), for those sales with a reported entered value, we will calculate importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Chandan did not to report entered value for the importers it identified. Therefore, to estimate entered value, we deducted from gross unit price international freight, marine insurance, and document clearing expenses. If, at the final results, we find that determining assessment rates on an *ad valorem* basis is not appropriate, we will do so on a per unit assessment basis.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for

each company by the total net value for that company's sales during the review period.

Further, the following deposit requirements will be effective for all shipments of SSB from India, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (Dec. 28, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. E5–924 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Stainless Steel Butt Weld Pipe Fittings From Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request by Sungkwang Bend Company Ltd., (SKBC), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order of certain stainless steel butt weld pipe fittings from Korea. The review covers one firm, SKBC. The period of review (POR) is February 1, 2003, through January 31, 2004.

We preliminarily determine that sales of stainless steel butt weld pipe fittings from Korea have been made below the normal value (NV) for SKBC. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

DATES: *Effective Date:* March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3520, Washington, DC 20230; telephone (202) 482–4475 or (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Stainless Steel Butt Weld Pipe Fittings from Korea,* 58 FR 11029. On February 27, 2004, SKBC requested an administrative review of the antidumping duty order on stainless steel butt weld pipe fittings from Korea in response to the Department's notice of opportunity to request a review published in the **Federal Register**. The Department initiated the review for SKBC on March 26, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 15788 (March 26, 2004).

On April 7, 2004, the Department issued sections A, B, and C of the antidumping questionnaire to SKBC. SKBC filed its response to section A of our questionnaire on May 12, 2004. On May 23, 2004, SKBC filed its response to sections B and C of our questionnaire.

The Department issued an additional supplemental questionnaire to SKBC on August 7, 2004. SKBC filed its response to our August 7, 2004, questionnaire on September 2, 2004.

On August 3, 2004, the Department extended the time limit for issuance of the preliminary results of the administrative review to February 28, 2005. *See Stainless Steel Butt Weld Pipe Fittings from Korea; Extension of Time Limit for Preliminary Results of Administrative Review,* 69 FR 46516 (August 3, 2004).

Scope of the Antidumping Duty Order

The products covered by this order are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter. Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified sales information provided

by SKBC, using standard verification procedures such as the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of our verification report, which is on file in the Central Records Unit (CRU) in room B–099 of the main Department building. *See* SKBC Sales Verification Report, dated February 7, 2005 (Verification Report).

Product Comparison

In accordance with section 771(16) of the Act, we considered all stainless steel butt-weld pipe fittings covered by the ''Scope of the Antidumping Duty Order'' section of this notice, *supra,* which were produced and sold by SKBC in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of stainless steel butt-weld pipe fittings.

We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: type, grade, seam, size, and schedule. Where there were no sales of identical merchandise in the home market to compare to the U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics and reporting instructions listed in the antidumping questionnaire. We performed a difference in merchandise (DIFMER) test to ensure that all comparison matches had no more than a 20% difference in variable cost of manufacture to the merchandise sold in the United States.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV LOT is that of the starting-price sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

SKBC reported one LOT in the home market, explaining that home market sales to distributors and end-users were made at the same level of trade. SKBC further submitted that it provided substantially the same level of customer support on its EP sales as it provided on its home market sales to distributors and end-users. We found that the selling functions (which included customer correspondence, order review and approval, post sale service and warranties, technical advice and services, advertising, freight and delivery arrangement, and ascertaining credit worthiness) to be virtually identical for home market sales to distributors and end-users. We also found that SKBC provided virtually the same level of customer support services on its U.S. EP sales as it did on its home market sales. (*See* Appendix S–2 of SKBC September 2, 2004 Response to the Department's Supplemental Questionnaire.) Therefore, we determine that there is only one LOT for SKBC's EP sales.

In its May 26, 2004, response, SKBC indicated that its U.S. subsidiary (Sungkwang Bend America (SKBA)) performed many of the same selling functions on SKBC's CEP sales that SKBC performed on its home market sales. SKBC also indicated that there was one LOT for CEP and that the CEP LOT was different than the home market LOT. We compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to home market sales. We determined there were fewer services such as customer correspondence, order review and approval, post sales service/warranties, technical advice, advertising, freight delivery arrangement, credit services and import document clearance, performed by SKBC on its CEP sales than on SKBC's home market sales. *See id.* In addition, the differences in selling functions performed for home market and CEP transactions indicate home market sales involved a more advanced stage of distribution than CEP sales. *See id.* In the home market, SKBC provided marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*). *See id.*

Based on our analysis of the record evidence on selling functions performed for the CEP LOT and the home market LOT, we determined the CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs within the meaning of 19 CFR 351.412. Therefore, when we compared CEP sales to home market sales, we examined whether an LOT adjustment may be appropriate. In this case, SKBC sold at one LOT in the home market; thus, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKBC's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making an LOT adjustment and the LOT of home market sales is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKBC. We based the amount of the CEP offset on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Comparisons

To determine whether sales of subject merchandise made by SKBC were made at less than fair value, we compared the EP or CEP, to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the EP or CEP of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product.

Transactions Investigated

Section 351.401(i) of the Department's regulations states that the Department normally will use date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of

business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which material terms of sale are established. For SKBC, the Department, consistent with its practice, used the invoice date since the invoice date represented the first point at which the home market and U.S. terms of sale were set. (See *e.g., Stainless Steel Sheet and Strip in Coils from Mexico, Preliminary Results of Antidumping Duty Administrative Review,* August 6, 2004 (69 FR 47905, 47908). *See also* Verification Report at pages 5–6.)

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States * * *.,'' as adjusted under subsection (c). Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter * * *.,'' as adjusted under subsections (c) and (d). For purposes of this administrative review, SKBC classified all of the U.S. sales that it shipped directly from Korea to the United States as EP sales. SKBC reported all sales that were invoiced through its U.S. subsidiary SKBA as CEP transactions. For these preliminary results, we have accepted these classifications. The merchandise shipped directly to unaffiliated distributors in the U.S. market was not sold through an affiliated U.S. importer. We, therefore, preliminarily determine that these transactions were EP sales. We have classified as CEP transactions the merchandise invoiced through SKBA because these sales were ''sold in the United States'' within the meaning of the Act.

Export Price

We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices to customers in the United States. We made deductions for billing adjustments and rebates. We also made adjustments for the following movement expenses: foreign inland freight, international freight, marine insurance, brokerage charges, U.S. inland freight, and U.S. Customs duties.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, international freight, marine insurance, brokerage charges, U.S. inland freight and U.S. customs duties. As further directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* billing adjustments, rebates, credit expenses, technical service expenses, and bank charges) inventory carrying costs, and other indirect selling expenses. We recalculated indirect selling expenses based upon SKBC's revised calculation of those expenses. (*See* Verification Report, at page 36.) We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared SKBC's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because SKBC's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

We made adjustments, where applicable, for movement expenses (consisting of inland freight) in accordance with section 773(a)(6)(B) of the Act. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made circumstance-of-sale adjustment for imputed credit, warranty, bank charges, and technical service expenses. We made deductions for billing adjustments and rebates. In addition, we made adjustments for differences in cost attributable to differences in the physical characteristics of the merchandise (*i.e.,* Difmer) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.410. We also made an adjustment, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market where commissions were granted on sales in the United States. As noted in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Act. Because SKBC failed to include labor costs in its original packing calculation, we made additions to both U.S. and home market packing costs to account for the labor component of packing expense. *See* SKBC Verification Report at 37.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the weighted-average dumping margin for the period February 1, 2003, through January 31, 2004, to be as follows:

Manufacturer/exporter	Margin (percent)
Sungkwang Bend Company Ltd	1.36

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of

the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific ad valorem assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of stainless steel butt weld pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company will be the rate established in the final results of review;

(2) For any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published in the most recent period;

(3) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the investigation (21.2 percent). *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Butt Weld Pipe Fittings From Korea,* 58 FR 11029 (February 23, 1993).

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–917 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Sebastian Wright or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5254 and (202) 482–3964, respectively.

Background

The Department of Commerce (the Department) published an antidumping duty order on stainless steel sheet and strip in coils from France on July 27, 1999 (*see Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order*, 64 FR 40562 (July 27, 1999)). On July 30, 2004, Ugine & ALZ France, S.A., a French producer of subject merchandise and petitioners (Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization), requested that the Department conduct an administrative review. On August 30, 2004, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2003, through June 30, 2004 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 52857 (August 30, 2004)). The preliminary results of this administrative review are currently due no later than April 2, 2005.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty 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 deadline for completion of the preliminary results of a review from 245 days to 365 days if it determines that it is not practicable to complete the preliminary results within the 245-day period. *See* section 751(a)(3)(A) of the Act. Due to the complexity of issues present in this administrative review, such as home market sales to affiliated parties and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 365 days from the last day of the anniversary month of the order. For the reasons noted above, we are extending the time for the completion of preliminary results until no later than August 1, 2005, 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 this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: February 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–921 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[(C–428–829); (C–421–809); (C–412–821)]

Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom

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

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period January 1, 2003, through December 31, 2003. For information on the net subsidy for the reviewed companies, please see the ''Preliminary Results of Reviews'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Robert Copyak at (202) 482–2786, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published in the **Federal Register** the CVD orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom. *See Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium from Germany, the Netherlands and the United Kingdom,* 67 FR 6688 (February 13, 2002) (*Amended Final*). On February 3, 2004, the Department published a notice of opportunity to request an administrative review of these CVD orders. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 69 FR 5125 (February 3, 2004). On February 25, 2004, we received a timely request for review from Urenco Ltd. (Urenco), the producer and exporter of subject merchandise. We note that this request covered all subject merchandise produced by Urenco in Germany, the Netherlands, and the United Kingdom. On February 26, 2004, we received a timely request for review from petitioners.[1] On March 26, 2004, the Department initiated administrative reviews of the CVD orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 15788 (March 26, 2004).

On April 13, 2004, the Department issued a questionnaire to the Government of the United Kingdom (UKG) and Urenco (Capenhurst) Ltd. (UCL), Urenco's producer of subject merchandise in the United Kingdom. Also on April 13, 2004, the Department issued a separate questionnaire to the Government of the Netherlands (GON) and Urenco Nederland B.V. (UNL), Urenco's producer of subject merchandise in the Netherlands. On April 16, 2004, the Department issued a questionnaire to the Government of Germany (GOG) and Urenco Deutschland GmbH (UD), Urenco's producer of subject merchandise in Germany.

We received questionnaire responses from the GON, the UKG, UCL, and UNL on May 20, 2004, from the GOG on May 14, 2004, and from UD on May 24, 2004.

On October 19, 2004, we issued an extension of the due date for these preliminary results from October 31, 2004, to February 28, 2005. *See Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Extension of Preliminary Results of Countervailing Duty Administrative Reviews,* 69 FR 61470 (October 19, 2004) (*Extension Notice*).

In accordance with 19 CFR 351.213(b), these reviews cover only those producers or exporters for which a review was specifically requested. The companies subject to these reviews are UD, UNL, UCL, Urenco Ltd., and Urenco Inc. These reviews cover four programs.

Scope of the Order

The product covered by these orders is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end-user.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period of review (POR) for these administrative reviews is January 1, 2003, through December 31, 2003.

International Consortium

In our *Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom,* 66 FR 65903 (December 21, 2001) (*LEU Final*) and accompanying Issues and Decision Memorandum (LEU Decision Memo) at Comment 2: International Consortium Provision, we found that the Urenco Group operates as an international consortium within the meaning of section 701(d) of the Tariff Act of 1930, as amended (the Act). No new information or evidence of changed circumstances has been presented since

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

the *LEU Final* which would persuade us to reconsider this conclusion. Therefore, we continue to find that the Urenco Group of companies constitutes an international consortium. Accordingly, we have continued to cumulate all countervailable subsidies received by the member companies from the GOG, the GON, and the UKG, pursuant to section 701(d) of the Act.

Subsidies Valuation Information

Allocation Period

Under section 351.524(d)(2) of the Department's regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant. In this instance, however, the IRS Tables do not provide a specific asset guideline class for the uranium enrichment industry.

In the *LEU Final,* we derived an AUL of 10 years for the Urenco Group (*see* LEU Decision Memo at Comment 3: Average Useful Life). The AUL issue is currently subject to litigation related to the investigation. Because there has been no final and conclusive court decision changing the AUL, and no new information or evidence of changed circumstances has been submitted, for these reviews, we continue to apply the 10-year AUL that was calculated in the *LEU Final.*

Programs Preliminarily Determined Not To Confer a Benefit From the Government of Germany

1. Enrichment Technology Research and Development Program

In the *LEU Final,* we determined that, under this program, the GOG promoted the research and development (R&D) of uranium enrichment technologies. The Federal Ministry for Research and Technology provided Uranitisotopentrennungsgeselleschaft mbH (Uranit) (the privately-held German arm of the Urenco Group) a series of grant disbursements for the funding of R&D projects. The funds were provided to encourage continuous improvements of centrifuge technologies and to fund the research of lasers and other advanced technologies. The grant disbursements under this program were made during the years 1980 through 1993.

Assistance under this program was provided for in two agreements and two sets of guidelines: the ''Financing Agreement,'' the ''Operating Agreement,'' the ''Terms and Conditions for Allocations on a Cost Basis to Companies in Industry for Research and Development Projects'' (BKFT75), and the ''Auxiliary Terms and Conditions for Grants on a Cost Basis from the Federal Ministry for Research and Development to Companies in Industry for Research and Development Projects'' (NKFT88), respectively. According to Article 4, Section 6, of the ''Financing Agreement,'' the funds provided to Uranit under this agreement had contingent repayment obligations. The funds were repayable within five years of disbursement, contingent upon the company's earnings. If the funds were not repaid within five years, then the repayment obligation lapsed. The funds provided under the ''Operating Agreement'' were not repayable. Uranit also received funds for laser R&D pursuant to the terms and conditions of the BKFT75 and NKFT88.

In the *LEU Final,* we determined that the assistance provided under this program constitutes countervailable subsidies within the meaning of section 771(5) of the Act. Specifically, we found that the grant disbursements constitute a financial contribution and confer a benefit, as described in sections 771(5)(B) and 771(5)(D)(i) of the Act. We further found that this program is specific under section 771(5A)(D)(i) of the Act because the provision of assistance under this program was limited to one company. In addition, we found that the program provided non-recurring benefits under section 351.524(c)(2) of the Department's regulations because the assistance was made pursuant to specific government agreements and was not provided under a program that would provide assistance on an ongoing basis from year to year. *See* LEU Decision Memo at the ''Enrichment Technology Research and Development Program'' section. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination; therefore, for these preliminary results, we continue to determine that this program is countervailable.

In the first administrative reviews, we determined that grant disbursements made under this program prior to 1992, including the 1985 disbursement made under the ''Financing Agreement,'' no longer provided a benefit during those reviews'' POR, *i.e.,* January 14, 2001, through December 31, 2002. We also determined that only the grant disbursements made in 1992 and 1993 continued to provide benefits during the 2001–2002 POR. *See Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom,* 69 FR 40869 (July 7, 2004) (*2001–2002 LEU*) and the accompanying Issues and Decision Memorandum (*2001–2002 LEU* Decision Memo) at the ''Analysis of Programs'' section.

In *2001–2002 LEU,* we determined that Urenco would not benefit from Enrichment Technology Research and Development Program subsidies from the GOG after 2002 because the grants were fully allocated at the end of 2002. *See 2001–2002 LEU* Decision Memo at Comment 3: Cash Deposit Rate for Future Urenco Imports.

Because the grant disbursements under this program were made between 1980 and 1993, the 10-year allocation period for each grant disbursement expired prior to the POR. Therefore, we preliminarily determine that each of these grants has been fully allocated prior to the POR, and, therefore, no benefit was received under this program during the POR.

2. Forgiveness of Centrifuge Enrichment Capacity Subsidies

In accordance with the ''Risk Sharing Agreement'' (RSA) and the ''Profit Sharing Agreement'' (PSA) signed between the GOG and Uranit, the GOG agreed to provide funds to UD to support the promotion of an uranium enrichment industry. These two agreements were signed on July 18, 1975, and the GOG provided a total of DM 338.3 million from 1975 to 1993 to Uranit in support of the Treaty of Almelo's goal of creating and promoting the enrichment industry.[2] Under the terms of the agreements, repayment of the funds was conditional and based upon the financial performance of the company. However, in no case was the amount of the total repayments to exceed twice the amount of the funds provided to UD by the GOG.

In 1987, Uranit signed a new agreement with the GOG. This

[2] In March 1970, the GOG, the GON, and the UKG signed the Treaty of Amelo, which became effective in July 1971. The purpose of the treaty was for the three governments to collaborate in the development and exploitation of the gas centrifuge process for producing enriched uranium. Prior to 1971, the centrifuge R&D programs in each country were independent.

''Adjustment Agreement'' stipulated that Uranit would repay the GOG for the DM 333.8 million in centrifuge capacity assistance and an additional agreed-upon DM 31.7 million which was not related to the centrifuge subsidies. Prior to the 1993 merger of the Urenco Group, the GOG and Uranit negotiated a basis to terminate the repayment obligations of the RSA and the PSA. Based upon these negotiations, a ''Termination Agreement'' was signed on July 13, 1993, and amended on October 27, 1993. Prior to the Termination Agreement, Uranit had made repayments totaling DM 5.6 million. Under the terms of the Termination Agreement, Uranit was to pay the GOG DM 101.1 million, thus terminating the repayment obligations stipulated in the Adjustment Agreement. Uranit made this DM 101.1 million payment on July 1, 1994.

In the *LEU Final,* we determined this program to be countervailable. We found that assistance provided under this program to Uranit was specific under section 771(5A)(D)(i) of the Act because the program was limited to one company. In addition, we determined that a financial contribution was provided under section 771(5)(D)(i) of the Act. We also determined that a benefit was provided to the company, within the meaning of section 771(5)(E) of the Act to the extent that the repayments made to the GOG were less than the amount of assistance provided to the company under this program. *See* LEU Decision Memo at the ''Forgiveness of Centrifuge Enrichment Capacity Subsidies'' section. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination; therefore, for these preliminary results, we continue to determine that this program is countervailable.

In the *LEU Final,* we determined that this program provided a grant under 19 CFR 351.505(d)(2) because there was a waiver of a contingent liability. We determined the adjusted grant amount to be equal to the difference between the original amount of centrifuge subsidies (DM 338.3 million) and the total amount of repayment attributable to those centrifuge subsidies (DM 97.556 million), which we calculated to be DM 240.744 million. We also determined that the first year of allocation was 1993, the year in which the repayment obligation stipulated in the Adjustment Agreement was waived. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination.

In *2001–2002 LEU,* we determined that Urenco would not benefit from Forgiveness of Centrifuge Enrichment Capacity subsidies from the GOG after 2002 because the grants were fully allocated at the end of 2002. *See 2001–2002 LEU* Decision Memo at Comment 3: Cash Deposit Rate for Future Urenco Imports. Therefore, we preliminarily determine that the grant has been fully allocated prior to the POR, and, therefore, no benefit was received under this program during the POR.

Programs Preliminarily Determined To Be Not Used From the Government of the Netherlands

1. Wet Investeringsrekening Law (WIR)

In the *LEU Final,* we found that the WIR program was not used. In the instant administrative reviews, we asked UNL if it received or used benefits under this program during the POR. UNL responded that it did not apply for, use, or receive benefits from the WIR program during the POR. Furthermore, UNL reported that the WIR program ended in 1988 and investment credits could only be claimed through the 1989 tax year. Therefore, we preliminarily find that the WIR was not used during the POR.

2. Regional Investment Premium

In the *Amended Final,* we found that, after correcting for a ministerial error in the *LEU Final,* the subsidy from the Regional Investment Program (IPR) was less than 0.5 percent of the Urenco Group's combined sales and, in accordance with 19 CFR 351.524(b)(2), was allocable to the year of receipt (1985). As a result of this revision, the net subsidy for this program decreased from 0.03 percent *ad valorem* to 0.00 percent *ad valorem. See Amended Final,* 67 FR 6688. Moreover, in the instant reviews, UNL reported that it did not apply for nor did it use the IPR program during the POR. Therefore, we preliminarily determine that UNL did not use the IPR program during the POR.

Programs From the Government of the United Kingdom

We preliminarily determine that UCL neither received any subsidies nor benefitted from any subsides during the POR.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for UD, UNL, UCL, Urenco Ltd., and Urenco Inc, the only producers/exporters subject to these administrative reviews, for the POR, *i.e.,* calendar year 2003. We preliminarily determine that the total estimated net countervailable subsidy rate is 0.00 percent *ad valorem.*

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate without regard to countervailing duties all shipments of subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption during the POR. Should the final results of these reviews remain the same as these preliminary results, the Department also will instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the old antidumping regulation on automatic assessment, which is identical to the current regulation, 19 CFR 351.212(c)(1)(ii)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash

deposit rate that will be applied to a non-reviewed company covered by these orders will be the rate for that company established in the most recently completed administrative proceeding. *See Amended Final,* 67 FR 6688. These cash deposit rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–926 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–819]

Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium From France

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on low enriched uranium from France for the period January 1, 2003, through December 31, 2003. For information on the net subsidy for the reviewed company, please see the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson at (202) 482–4793, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published in the **Federal Register** the countervailing duty order on low enriched uranium from France. *See Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium from France,* 67 FR 6689 (February 13, 2002) (*Amended LEU Final Determination*). On February 3, 2004, the Department published an opportunity to request an administrative review of this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request an Administrative Review,* 69 FR 5125 (February 3, 2004). We received a timely request for review of Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered under this review by both respondents and petitioners.[1] On March 26, 2004, the Department published the initiation of the administrative review of the countervailing duty order on low enriched uranium from France, covering the January 1, 2003, through December 31, 2003 period of review (POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Revocation in Part,* 68 FR 15788 (March 26, 2004).

On April 21, 2004, the Department issued a questionnaire to the Government of France (GOF) and Eurodif/COGEMA. On June 1, 2004, the Department received questionnaire responses from the GOF and Eurodif/COGEMA. On October 19, 2004, the Department published in the **Federal Register** an extension of the deadline for the preliminary results. *See Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews,* 69 FR 61470 (October 19, 2004). On October 4, 2004, and January 13, 2005, we issued supplemental questionnaires to respondents. On November 1, 2004, and January 28, 2005, we received supplemental responses from respondents.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The company subject to this review is Eurodif/COGEMA. This review covers two programs.

Scope of Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium

[1] Petitioners are USEC Inc. and its wholly owned subsidiary, United States Enrichment Corporation.

concentrates (U3O8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (I) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The POR for which we are measuring subsidies is January 1, 2003, through December 31, 2003.

Company History

Eurodif was formed in 1973, by French and foreign government agencies to provide a secure source of LEU in order to facilitate the development of nuclear energy programs in participating countries. During the POR, Eurodif was 44.65 percent-owned by COGEMA, which itself is principally owned by a subsidiary of the Commissariat d'Energie Atomique, an agency of the GOF. Further, Eurodif was 25 percent-owned by SOFIDIF, a French company that is 60 percent-owned by COGEMA, thereby effectively placing COGEMA's ownership of Eurodif at approximately 60 percent during the POR. The remaining major shareholders of Eurodif during the POR were ENUSA, an entity of the Spanish government, SYNATOM, an entity of the Belgian government, and ENEA, an entity of the Italian government.

Programs Preliminarily Determined To Confer Subsidies

1. Purchases at Prices That Constitute ''More Than Adequate Remuneration''

Eurodif provides LEU to Electricite de France (EdF), a wholly owned French government agency that supplies, imports, and exports electricity. EdF is the major supplier of electricity in France, and is regulated by the Gas, Electricity, and Coal Department of the Ministry of Industry and the Budget and Treasury Departments of the Ministry of Finance. To date, EdF has entered into three long-term contracts with Eurodif to secure LEU. The first contract was negotiated in 1975; Eurodif began enrichment at its Georges-Besse gaseous diffusion facility in 1979. Eurodif and EdF entered into a subsequent contract in 1995, under which the POR purchases were made.

In the *Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France,* 66 FR 65901 (December 21, 2001) (*LEU Final Determination*), and the *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 69 FR 40871 (July 7, 2004) (*LEU Final Results*), we found this program to be countervailable. The facts on which this determination was made have not changed. EdF is still owned by the GOF, and because EdF is purchasing a good from Eurodif, a financial contribution is being provided under section 771(5)(D)(iv) of the Tariff Act of 1930, as amended (the Act). The program is specific under section 771(5A)(D)(i) of the Act because it is available only to Eurodif.

Under section 771(5)(E)(iv) of the Act, a countervailable benefit may be provided by a government's purchase of a good for ''more than adequate remuneration.'' Pursuant to section 771(5)(E)(iv) of the Act, the adequacy of remuneration will be determined in relation to the prevailing market conditions for the good being purchased in the country which is subject to the review. Therefore, in order to determine whether the prices paid by EdF constitute ''more than adequate remuneration,'' we compared the prices paid by EdF to Eurodif with the prices paid by EdF to its other suppliers.

Due to the difference in the pricing structure between EdF and Eurodif, as compared with the pricing structure between EdF and its other suppliers, it is necessary to make certain adjustments for the comparison. Unlike most other customers, EdF provides its own energy for Eurodif to use when producing LEU. Beginning in 2002, EdF started to pay Eurodif in energy for the energy that Eurodif uses to produce EdF's LEU. Eurodif charges EdF, however, for the operational costs associated with the production of the LEU. As EdF does not supply electricity to its other LEU suppliers, these suppliers charge EdF a single price per separative work unit (SWU).[2] Thus, we have used this single price per-SWU as our benchmark price. In order to make a proper comparison between the benchmark price and the actual price (*i.e.*, the price paid by EdF to Eurodif), we included both an operational and energy price paid by EdF to Eurodif.

As part of the arrangement for obtaining LEU, customers often provide an amount of natural uranium equal to that which theoretically went into the LEU they are purchasing. The record does not contain information on the value of the natural uranium provided by EdF or other customers to Eurodif. In the ''Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II to Faryar Shirzad, Assistant Secretary for Import Administration concerning the Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France—Calendar Year 1999'' (*Final Determination Decision Memorandum*) dated December 13, 2001, we assumed that the value of all natural uranium is the same (*see* discussion at page 5). In making purchase comparisons in this review, we continue to assume that the value of all natural uranium is the same in instances where EdF supplied its own feed material for enrichment. Thus, we have not included a value for the natural uranium component of the LEU delivered to EdF by Eurodif.

In order to determine whether a benefit was provided to Eurodif/COGEMA during the POR, we calculated a per-SWU price for both the energy and operational components of the LEU purchased by EdF from Eurodif. See the February 28, 2005, Memorandum concerning the Calculations for the Notice of Preliminary Countervailing Duty Results: Low Enriched Uranium from France (*Preliminary Calculations Memorandum*).[3] After adding these two components together, we compared the per-SWU price paid to Eurodif by EdF

[2] The ''separative work unit'' or (SWU) is the unit of measure of effort required to carry out isotopic separation of the uranium from its natural state to the concentration or ''assay'' required for power plant use.

[3] A public version of the document is available on the public record in the Central Records Unit (CRU) located in the main Commerce Building in room B–099.

in 2003, with the per-SWU price paid by EdF to its other LEU suppliers in 2003. Based on our analysis, we preliminarily determine that the per-SWU price paid by EdF to Eurodif was not higher than the per-SWU price paid by EdF to its other suppliers and, therefore, EdF's LEU purchases from Eurodif did not confer a countervailable benefit during the POR.

We, however, did calculate a countervailable benefit from a sale pursuant to the contract listed in Exhibit 21 of Eurodif/COGEMA's June 1, 2004, questionnaire response.[4] Consistent with our approach in the *LEU Final Results,* we expensed the benefit in the year of receipt. For a further discussion, see the *Preliminary Calculations Memorandum.* We then multiplied the benefit amount by the sales of subject merchandise to the United States divided by total sales, and then divided that result by sales that entered U.S. customs territory during 2003. Thus, we calculated the *ad valorem* rate for this program using the following formula:

$$A = \frac{B * (C/D)}{E}$$

Where:

A = *Ad Valorem* Rate
B = Subsidy Benefit
C = Sales of Subject Merchandise to the United States during the Calendar Year
D = Total Sales during the Calendar Year (including COGEMA sales on behalf of Eurodif)
E = Sales that Entered U.S. customs territory during the Calendar Year

On this basis, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.[5]

2. Exoneration/Reimbursement of Corporate Income Taxes

Under a specific governmental agreement entered into upon Eurodif's creation, Eurodif is only liable for income taxes on the portion of its income relating to the percentage of its private ownership. Eurodif is fully exonerated from payment of corporate income taxes corresponding to the percentage of its foreign government ownership and is eligible for a reimbursement of the amount of corporate income taxes corresponding to the percentage of its French government ownership. In the *LEU Final Determination* and *LEU Final Results,* we found this program to be countervailable. No new information has been provided in this review to warrant reconsideration of our determination.

During the POR, (*i.e.*, calendar year 2003), Eurodif filed its 2002 corporate income tax return. Based on the governmental tax agreement, Eurodif was exonerated from a portion of its 2002 income taxes filed during the POR. Eurodif was also reimbursed that portion of its 2002 income taxes attributable to its percentage of French government ownership during the POR. This tax exemption and reimbursement constitute a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, because the tax exemption and reimbursement is limited to Eurodif, the benefit is specific in accordance with section 771(5A)(D)(i) of the Act.

In accordance with 19 CFR 351.509(b), we calculated the benefit under this program by determining the amount of corporate income taxes that Eurodif would have otherwise paid, absent the program, on the tax return it filed during the POR. Specifically, we added the amount of exonerated taxes and the amount of reimbursable taxes during the POR. We then divided the total benefit amount by Eurodif's total sales for calendar year 2003. We adjusted Eurodif's sales denominator using the methodology described in the ''Purchases at Prices that Constitute 'More Than Adequate Remuneration' '' section, above. This methodology is consistent with our approach in the *LEU Final Results.* On this basis, we preliminarily determine a net countervailable subsidy of 1.23 percent *ad valorem* under this tax program.

Preliminary Results of Review

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Eurodif/COGEMA for 2003. We preliminarily determine that the total countervailable subsidy rate is 1.23 percent *ad valorem.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of this review, to liquidate shipments of LEU from France by Eurodif/COGEMA entered, or withdrawn from warehouse, for consumption from January 1, 2003, through December 31, 2003, at 1.23 percent *ad valorem* of the f.o.b. invoice price. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 1.23 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from Eurodif/COGEMA entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed, and cash deposits must continue to be collected, at the cash deposit rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 351.212(c)(ii)(2). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding. *See Amended LEU Final Determination,* 67 FR 6689 (February 13, 2002). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Eurodif/COGEMA may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise.

[4] The details of this transaction are business proprietary.

[5] Where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total countervailing duty rate. *See, e.g.,* the *Other Programs Determined to Confer Subsidies* section of the Issues and Decision Memorandum that accompanied the *Final Results of Administrative Review: Certain Softwood Lumber Products from Canada,* 69 FR 75917 (December 20, 2004).

Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunctions, issued on June 24, 2002, and November 1, 2004, are lifted.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(I)(1)).

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–927 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030105C]

Fisheries of the Exclusive Economic Zone Off Alaska; Notice of Crab Rationalization Program Public Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS will present a series of public workshops on the new Crab Rationalization Program (Program) for participants the Bering Sea and Aleutian Islands (BSAI) king and Tanner crab fisheries. At each workshop, NMFS will provide an overview of the Program, discuss the key Program elements, provide information on the application process, and answer questions. NMFS is conducting these public workshops to provide assistance to fishery participants in complying with the requirements of this new Program.

DATES: Workshops will be held in March and April 2005. For specific dates and times see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Workshops will be held in Kodiak, AK; Seattle, WA; Newport, OR; and Anchorage, AK. For specific locations see SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Sheela McLean, 907–586–7032 or *sheela.mclean@noaa.gov*.

SUPPLEMENTARY INFORMATION: On March 2, 2005, NMFS published a final rule implementing the Crab Rationalization Program (Program) as Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs. In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. No. 108–199, section 801). As amended, section 313(j)(1) requires the Secretary to approve and implement the Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a proposed rule to implement Amendments 18 and 19 in the **Federal Register** on October 29, 2004 (69 FR 63200).

NMFS is conducting public workshops to provide assistance to fishery participants in complying with the requirements of this new Program. At each workshop, NMFS will provide an overview of the Program, discuss the key Program elements, and provide information on the application process. The key Program elements to be discussed include economic data collection, the Arbitration System, community measures, monitoring and enforcement, electronic reporting, quota share and individual fishing quota application and transfer provisions, the appeals process, fee collection, and the loan program. Additionally, NMFS will answer questions from workshop participants. For further information on the Crab Rationalization Program, please visit the NMFS Alaska Region Internet site at *www.fakr.noaa.gov*.

Workshop Dates, Times, and Locations

NMFS will hold public workshops as follows:

1. Friday, March 18, 2005, 10 a.m. – 4 p.m. Alaska local time (ALT) – Choral Pod, Kodiak High School, Kodiak, AK.
2. Wednesday, March 30, 2005, 10 a.m. – 4 p.m. Pacific Standard Time (PST) – Leif Erickson Hall, 2245 Northwest 57th Street, Seattle, WA.
3. Friday, April 1, 2005, 10 a.m. – 4 p.m. PST – Seminar Room, Marine Hatfield Science Center, 2030 Southeast Marine Science Drive, Newport, OR
4. Tuesday, April 5, 2005, 6 p.m. – 9 p.m. ALT – Anchorage Hilton, Katmai/ Dillingham Room, 500 West Third Avenue, Anchorage, AK.

Special Accommodations

These workshops are physically accessible to people with disabilities. Requests for special accommodations should be directed to Sheela McLean (see **FOR FURTHER INFORMATION CONTACT**) at least five working days before the workshop date.

Dated: March 1, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4379 Filed 3–4–05; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 March 2005 at 9 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Frederick J. Lindstrom, Acting Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sing language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC on February 25, 2005.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 05–4318 Filed 3–4–05; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on May 6, 2005, from 8 a.m. to 5 p.m. The meeting will be held at the DoDEA headquarters building at 4040 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters. For further information contact Mr. Jim Jarrard, at 703–588–3121 or at *James.Jarrard@hq.dodea.edu.*

Dated: March 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4369 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Date Change.

SUMMARY: On Friday, February 25, 2005 (70 FR 9280–9281) the Department of Defense announced open meetings of the Defense Science Board (DSB) Task Force on Roles and Authorities of the Director of Defense Research and Engineering scheduled for February 24, 2005 and March 14, 2005. These meetings will now be closed. Due to inclement weather the meeting on February 24, 2005 was canceled and rescheduled for March 2, 2005. Both meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: March 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4372 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Mobility will meet in closed session on March 17, 2005, in Arlington, VA. This Task Force will identify the acquisition issues in improving our strategic mobility capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review: the part transport plays in our present-day military capability—the technical strengths and weaknesses the operational opportunities and constraints; the possible advantage of better alignment of current assets with those in production and those to be delivered in the very near future; how basing and deployment strategies—CONUS-basing, prepositioning (ashore or afloat), and seabasing—drive our mobility effectiveness; the possible advantages available from new transport technologies and systems whose expected IOC dates are either short term (~ 12 years) or, separately, the long term (~ 25 years).

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: March 2, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4374 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Correction

AGENCY: Department of Defense.

ACTION: Notice; correction.

SUMMARY: The Department of Defense published a document in the **Federal Register** of February 1, 2005, concerning an announcement of a committee meeting, in accordance with Section 1 0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The meeting time has now been changed.

FOR FURTHER INFORMATION CONTACT: Ms. Taunya King, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Correction

In the **Federal Register** of February 1, 2005, in FR Doc. 01fe05–49, on page 5170, in the second column, correct the

DATES caption to read: March 15, 2005 from 0900 to 1700 and March 16, 2005 from 0800 to 1525.

Dated: February 28, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4371 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office; Privacy Act of 1974; System of Records.

AGENCY: National Reconnaissance Office.

ACTION: Notice to alter a system of records.

SUMMARY: The National Reconnaissance Office is altering 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 April 6, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Contact the FOIA/NRO Privacy Official at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office 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 report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 1, 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: February 25, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–21

SYSTEM NAME:

Personnel Security Files (January 14, 2002, 67 FR 1741).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry 'and security incident records, such as the security file number, user id, date resolved, case id, case manager, government point of contact, incident report date, incident report type, date notified, reporter's name, affiliation, employer, officer, information systems security officer name and phone number, manager name and phone number, program security officer name and phone number, date of incident, location where incident occurred, incident type and description, names of personnel involved with incident along with their social security number, office, affiliation, employer, and phone number, incident category, classification of data, name of person who classified it, including identification number, title, position, organization, phone number, person who verified classification level of data, their title, position, organization, phone number and source used to verify classification, data owner name, their title, position, organization, phone number, date notified, date classification confirmed, number of individuals and organizations with unauthorized access to information and their clearance level, organization that caused the unauthorized disclosure, nature of unauthorized disclosure, where file originated, how data was introduced into computer system, file name, size, type and whether action warrants notification of the Director of Central Intelligence.'

* * * * *

PURPOSE(S):

Add a new paragraph to entry 'The system will provide a centrally managed security incident database for NRO security managers. The user will be the primary reporter of the information. This will also be a tool to ensure incidents are identified, documented, tracked, investigated, responded to, adjudicated, and corrected, in a standard and timely manner.'

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

Add a new paragraph 'To the Intelligence Community to review the records, in the form of statistics only, for the purpose of providing trend analysis, disseminating threat information, providing reports of IT threats, any issues affecting mission critical networks, informing them of unauthorized disclosures or any compromise of intelligence information in accordance with applicable law.'

RETRIEVABILITY:

Add to entry 'type of incident, Case ID, Case Manager, and responsibility Program Security Officer.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Security case records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Security incident records are temporary, retained for 5 years after inactivation. Audio and videotapes of polygraph examinations and interviews are temporary and are re-used or destroyed when superseded, obsolete, or no longer needed.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add to entry 'Deputy Director of Administration, Office of Security, Chief of Security Policy Staff.'

* * * * *

QNRO–21

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Office of Security, Personnel Security Division, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National REconnaissance Office (NRO) civilian, military and contractor personnel who have been nominated or investigated for security clearances and program accesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

'Name, Social Security Number, agency identification number, employee's geographic work location, employer, work telephone number, date and place of birth, home address and home telephone number, dependents' names, individual's background investigation and polygraph data, interview and adjudication information, all other information such as that found

on standard government forms SF 86 and 1879, appeal and referral data, program access status, classification number, the security file location, and administrative and investigatory comments and security incident records, such as the security file number, user id, date resolved, case id, case manager, government point of contact, incident report date, incident report type, date notified, reporter's name, affiliation, employer, officer, information systems security officer name and phone number, manager name and phone number, program security officer name and phone number, date of incident, location where incident occurred, incident type and description, names of personnel involved with incident along with their social security number, office, affiliation, employer, and phone number, incident category, classification of data, name of person who classified it, including identification number, title, position, organization, phone number, person who verified classification level of data, their title, position, organization, phone number and source used to verify classification, data owner name, their title, position, organization, phone number, date notified, date classification confirmed, number of individuals and organizations with unauthorized access to information and their clearance level, organization that caused the unauthorized disclosure, nature of unauthorized disclosure, where file originated, how data was introduced into computer system, file name, size, type and whether action warrants notification of the Director of Central Intelligence.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.;* 5 U.S.C. 301 Departmental Regulations; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

The information is used for grant in security program accesses to NRO personnel; to maintain, support, and track personnel security administrative processing; to provide data for day-to-day security functions; and to conduct security investigations. The system also provides a centrally managed security incident database for NRO security managers. The user will be the primary reporter of the information to enable an accurate overall view of incident response activities. This will also be a tool to ensure incidents are identified, documented, tracked, investigated, responded to, adjudicated, and corrected, in a standard and timely manner.

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 NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To contractors and other Federal agencies for purposes of protecting the security of NRO installations, activities, property, and employees; to facilitate and verify an individual's eligibility to access classified information; and to protect the interests of National Security. The NRO Director of Security or his/her designee must approve disclosure in writing.

To the Intelligence Community to review the records, in the form of statistics only, for the purpose of providing trend analysis, disseminating threat information, providing reports of IT threats, any issues affecting mission critical networks, informing them of unauthorized disclosures or any compromise of intelligence information in accordance with applicable law.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO 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:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, Social Security Number, agency identification number, employer, employee's geographic work location, date and place of birth, administrative comments, type of incident, Case ID, Case Manager, and responsibility Program Security Officer.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to security staff whose official duties require such access.

RETENTION AND DISPOSAL:

Security case records are temporary, retained for 15 years after inactivation; noteworthy files are retained for 25 years after inactivation. Security incident records are temporary, retained for 5 years after inactivation. Audio and videotapes of polygraph examinations and interviews are temporary and are reused or destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security Division, Office of Security, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

Chief, Security Policy Staff, Office of Security, Deputy Director of Administration, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326 or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, by persons other than the individual, and by documentation gathered in the background investigation, and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes 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 such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 05–4368 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records; correction

AGENCY: Department of the Army, DoD

ACTION: Notice to amend system of records; correction.

SUMMARY: The Department of Defense published a document in the **Federal Register** of February 25, 2005, the Department of the Army is proposing to amend the Preamble to its Compilation of Privacy Act systems of records notices by updating the telephone number of the *Point of Contact*. The point of contact and phone number is incorrect.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

Correction

In the **Federal Register** of February 25, 2005, in FR Doc. 25fe05–61, on pages 9289, in the first column, correct the ''Point of Contact'' to read:

''*Point of Contact:* Ms. Janice Thornton at 703–428–6497; DSN: 328–6497.''

Dated: February 28, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4373 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Department of the Navy 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 on April 6, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Lama at 202–685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems, 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, were submitted on January 26, 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, (61 FR 6427, February 20, 1996).

Dated: February 28, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

NM05100–5

SYSTEM NAME:

Enterprise-wide Safety Applications Management System (ESAMS).

SYSTEM LOCATION:

HGW and Associates, LLCI, Suite A–100, 9000 Executive Park Drive, Knoxville, TN 37923–4685 and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://ned.daps.dla.,mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy military and civilian personnel, non-appropriated personnel, and foreign national civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, job title, rank/rate/grade, civilian/military indicator, unit identification code (UIC) , activity name, major command code, department, sex, job title, OSH training received, test scores, occupational medical stressors, medical physical dates and non-medically sensitive results, respirator usage and fit test results, chemical and/or environmental exposures, and occupational injuries/illnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101–4118, the Government Employees Training Act of 1958; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5042, Commandant of the Marine Corps; E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 9397 (SSN).

PURPOSE(S):

The Department of the Navy is proposing to establish a system of

records to identify and track individuals performing duties in the safety and health programs for the Department of the Navy. To demonstrate compliance with the Occupational Safety and Heath Administration, the Navy Occupational Safety and Heath Program, and related regulations by identifying the personnel and their appropriate duties and requirements associated with these assigned tasks.

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:

To the Occupational Safety and Health Administration during the course of an on-site inspection.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems bf records notices apply to this system.

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

STORAGE:

Computerized database.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Computer facilities and terminals pre located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Information is password protected. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are retained for up to their duration of employment plus 30 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mit/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain individual's full name, Social Security Number, address and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to access the information about themselves contained in this system of records not accessible through system interfaces should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.diaps.dla.mil/sndl.htm.*

The request should contain the individual's full name, Social Security Number, address and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; personnel file excerpts; medical record excerpts; office files; etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–4370 Filed 3–4–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revision and three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 of the surveys in the Natural Gas Data Collection Program Package. The surveys covered by this request include:

- Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition''
- EIA–191, ''Monthly and Annual Underground Gas Storage Report''
- EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''
- EIA–895, ''Monthly and Annual Quantity and Value of Natural Gas Production Report'' (The EIA proposes to eliminate the current monthly reporting of Form EIA–895 and only require an annual report.)
- EIA–910, ''Monthly Natural Gas Marketer Survey''
- EIA–912, ''Weekly Underground Natural Gas Storage Report''

In addition, EIA is proposing that the following new survey be approved by OMB.

- EIA–913, ''Monthly and Annual Liquefied Natural Gas (LNG) Storage Report''

DATES: Comments must be filed by May 6, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Mr. Stephen Nalley, Natural Gas Division, Office of Oil and Gas, Energy Information Administration. To ensure receipt of the comments by the due date, submission by fax (202–586–4420) or e-mail (*stephen.nalley@eia.doe.gov*) is recommended. The mailing address is Mr. Stephen Nalley, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW, EI–44, Washington, DC 20585. Also, Mr. Nalley may be contacted by telephone at 202–586–0959.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Nalley at the address listed above.

Also, the draft forms and instructions are available on the EIA Web site at *http://www.eia.doe.gov/oil_gas/fwd/proposed.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet

both near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on the collection of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA prepare data requests that maximize the utility of the information collected, and assess the impact of collection requirements on the public. As required by section 3507(h)(1) of the Paperwork Reduction Act of 1995, the EIA will later seek approval by the Office of Management and Budget (OMB).

The natural gas surveys included in the Natural Gas Data Collection Program Package collect information on natural gas production, underground storage, transmission, distribution, and consumption by sector, and wellhead and consumer prices. This information is used to support public policy analyses of the natural gas industry and estimates generated from data collected on these surveys are posted to the EIA Web site (*http://www.eia.doe.gov*) in various EIA products, including the *Weekly Natural Gas Storage Report* (WNGSR), *Natural Gas Monthly* (NGM), *Natural Gas Annual* (NGA), *Monthly Energy Review* (MER), *Short-Term Energy Outlook* (STEO), *Annual Energy Outlook* (AEO), and *Annual Energy Review* (AER). Respondents to EIA natural gas surveys include State agencies, underground storage operators, transporters, marketers, and distributors. Each form included as part of this package is discussed in detail below.

EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition''

In conjunction with data collected in other EIA surveys, Form EIA–176 provides EIA with the major elements of information required to develop annual gas supply and disposition balances and relevant cost, price, and related information at the State level. It is used for the following purposes:

(1) To develop and make available to Congress, State government, and the public an accurate quantified overview of the supply of natural and supplemental gas available to each of the States from all sources both internal and external to the State, and the manner in which such supply was utilized or otherwise disposed of,

(2) To determine the quantity of natural and supplemental gas consumed within each of the States by market sector, the average sales prices for such gas, and the changes in consumption and price patterns over time.

EIA–191, ''Monthly and Annual Underground Gas Storage Report''

Form EIA–191 is comprised of a monthly (EIA–191M) and annual (EIA–191A) schedule. The EIA–191M currently requests monthly data on the location and operations of all active underground natural gas storage fields. The EIA–191A collects data on total field capacity, operation capability and field type as of December 31 of the reporting year. Storage data are a critical link in understanding the deliverability of the natural gas system of the United States and overall system operations.

The information collected on Form EIA–191 will be used in the following ways:

(1) To provide State-level data on underground natural gas storage with respect to injections, withdrawals, inventories, and type of storage facility, location, and capacity. These data will be made available through EIA's NGM, NGA, MER, and AER. Monthly data collection also provides reliable baseline data on storage operations necessary for analyses, modeling, and comparison with normal industry operations in cases of severe weather, natural disaster, or other extreme circumstances,

(2) To provide data on all aspects of underground natural gas storage to enable EIA and other elements of DOE to identify and assess the supplies of gas in storage by geographic location.

EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''

Monthly State-level data collected on the Form EIA–857 consist of average price of natural gas purchased by local distribution companies at their city gates, consumption of natural gas by sector, and average sales price by sector. These data are necessary to provide timely information needed to measure the combined impact of government, industry, and consumer actions; geographic location; climatic conditions; and other factors on the natural gas industry and natural gas consumers. The data collected on the Form EIA–857 are used to develop information for publication in EIA's STEO, NGM, and MER, and to make the data available to Congress, State governments, industry, and the public.

EIA–895, ''Monthly and Annual Quantity and Value of Natural Gas Production Report''

Form EIA–895 is a voluntary survey, which is comprised of monthly (EIA–895M) and annual (EIA–895A) schedules. The EIA–895M collects monthly information from the appropriate State agencies concerning natural gas production. It provides details on gross withdrawals from gas and oil wells and from coalbed methane wells, volumes vented and flared, volumes of nonhydrocarbon gases removed, gas used as fuel on leases, and the amount of natural gas available for market. These data are routinely collected by States for taxation, conservation, or statistical purposes. In addition to providing an annual summary of the monthly collected data, the EIA–895A provides detail on the value of marketed production.

EIA–910, ''Monthly Natural Gas Marketer Survey''

Form EIA–910 collects monthly information for developing accurate estimates of State-level prices paid by residential and commercial consumers of natural gas in states where a choice program exists. Data from the EIA–910 are combined with data from the EIA–857 to produce more complete and accurate price estimates.

EIA–912, ''Weekly Underground Natural Gas Storage Report''

The EIA–912 data collection responds to requests to provide weekly measures of natural gas underground storage operations. Through this survey instrument, EIA provides a weekly data series on underground storage of natural gas similar to what was previously published by the American Gas Association (AGA). AGA discontinued its data collection on May 1, 2002. EIA first released data from the survey on May 9, 2002. Data are now published weekly in the WNGSR. EIA uses the data to prepare analytical products assessing storage operations in the three AGA regions and their impact on supplies available for the winter heating season, and in more detailed analyses correlating demand, heating-degree-days, and prior inventory levels. Such correlations help EIA to understand the impact of storage operations on natural gas supply and demand.

EIA–913, ''Monthly and Annual Liquefied Natural Gas (LNG) Storage Report''

In 2003, EIA proposed a survey to monitor the monthly volume of LNG in storage and annual operational capacities of active LNG storage

facilities in the United States. However, EIA did not implement this proposal due to modest public interest and limited budget resources. At the time of that decision, EIA committed to monitor the LNG market and reevaluate the usefulness of an LNG storage survey at a later date. EIA has prepared a revised proposal that has reduced the budget requirements and has also reduced the survey scope. The current proposal is discussed further in Section II.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA will be requesting a three-year extension of the collection authority for each of the above-referenced surveys, including the proposed new EIA–913. In addition, EIA proposes the changes outlined below that affect the EIA–176, EIA–191, EIA–857, EIA–895, EIA–910, EIA–912, and EIA–913.

Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition''

No significant changes are proposed for the EIA–176. Minor changes will be made to the survey form and instructions in order to provide simplicity and clarity. Although EIA proposes to continue the collection of the ''Operation type'' data, EIA is requesting comments regarding the practical utility of the data. EIA proposes to add a question about the use of alternative fueled vehicles to assist in the development of a comprehensive survey frame of respondents for the EIA–886, ''Annual Survey of Alternative Fueled Vehicles Suppliers and Users.''

Form EIA–191, ''Monthly and Annual Underground Gas Storage Report''

In addition to several minor changes to the instructions and monthly and annual schedules of Form EIA–191 for the purpose of simplicity and clarity, EIA proposes significant revisions to the data collected under Form EIA–191 as detailed below:

EIA–191A

In an effort to reduce respondent burden and simplify reporting requirements, EIA proposes to eliminate the ''Pipelines to which this field is connected,'' as well as to eliminate the check boxes used to note if data have changed from the previous annual report. EIA proposes to add the collection of ''Working Gas Capacity'' and the field status (*i.e.* active, abandoned, depleting, etc.) as of December 31 of each year. EIA is proposing that the data collected on the revised Annual Schedule of the EIA–191 will not be confidential, making individual company data of the following types available to the public: Storage Field Names, Reservoir Names, Location, Type of Facility, Total Field Capacity, Working Gas Capacity, and Maximum Deliverability, for all natural gas storage fields reporting on the EIA–191A.

EIA–191M

In an effort to reduce respondent burden, EIA proposes to eliminate the request for ''Peak day'' and ''Peak day withdrawals'' from the EIA–191M. The addition of a check box to signal capacity change for the field will be added.

Form EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''

No significant changes are proposed for the Form EIA–857. The instructions will include minor changes to provide simplicity and clarity. Although EIA proposes to continue the collection of the ''Purchased City-Gate'' data, EIA is requesting comment regarding the practical utility of the data.

Form EIA–895, ''Annual and Monthly Quantity and Value of Natural Gas Production Report''

In addition to several minor changes to the instructions of Form EIA–895, EIA proposes significant revisions to the data collected under Form EIA–895 as detailed below:

EIA–895A

EIA proposes to continue collecting the annual data with no significant change.

EIA–895M

EIA proposes to eliminate the current monthly schedule for Form EIA–895 as a source of production and disposition of natural gas components and used to calculate monthly marketed production estimates. Estimates based on the EIA–914, ''Monthly Natural Gas Production Report,'' will replace this monthly data source. Thus, there will be no monthly reporting with Form EIA–895.

Form EIA–910, ''Monthly Natural Gas Marketer Survey''

No significant changes are proposed for the EIA–910. Minor changes will be made to the survey form and instructions.

Form EIA–912, ''Weekly Underground Natural Gas Storage Report''

No significant changes are proposed for the EIA–912. Minor changes will be made to the survey form and instructions.

Form EIA–913, ''Monthly (September–March) and Annual Liquefied Natural Gas (LNG) Storage Report''

In 2003, EIA proposed to collect monthly and annual LNG storage information, but decided not to implement that proposal at that time. EIA promised to continue to monitor the LNG market and reconsider the proposed survey at a future time. LNG has an increasingly important role as a source of natural gas supply, especially during periods of peak demand. Therefore, EIA is proposing to conduct LNG storage surveys, subject to funds being provided in the FY2007 budget. If funding is made available, the survey would most likely not begin until calendar year 2007.

The current LNG survey proposal is different from the 2003 LNG Storage Report proposal. The current proposal would have the survey operate seasonally and monitor monthly storage levels during September through March only, whereas the 2003 proposal would have monitored monthly storage levels throughout the entire year. The current proposal also requires that respondents report only one monthly data item; *i.e.*, the amount of LNG in storage as of the report date. The 2003 proposal required respondents to report the amount of LNG in storage, LNG additions, LNG withdrawals, LNG peak day and LNG peak day withdrawals. Additionally, unlike the 2003 proposed survey, the 2005 proposed monthly survey would be administered via the telephone in order to increase timeliness of product dissemination and reduce respondent burden. The proposed annual survey form is similar to the one included in the 2003 proposal. Respondents will be required to report: Storage facility name, state location of the storage facility, storage facility design capacity, maximum liquefaction design capacity, maximum vaporization design capacity, trailer loading/unloading ability and number of bays, and whether the capacity had changed from what was previously reported.

All operators of facilities that store LNG for baseload, seasonal, and peak demand delivery in the United States, or for delivery to United States customers for these purposes would be required to complete the mandatory report. This

will include operators with LNG inventories such as distribution companies, pipeline companies, liquefaction facilities, LNG wholesalers, and marine terminals providing peaking storage services. The survey coverage will not include LNG inventories held by any industrial, residential, commercial, or power generation operations for ultimate consumption.

Respondents would be required to complete the EIA–913 Annual Schedule at the start of the survey and subsequently once a year in September thereafter and whenever a new facility begins operation or a change in storage operator or storage capacity occurs. The EIA would contact the respondents on the first Monday of the month or the first business day after the first Monday of the month in the event of a holiday.

The aggregate data collected on the Form EIA–913 for the United States and several multi-state regions would be used to develop national and regional level estimates for publication in the NGM, MER, and NGA; no State level data would be published. EIA proposes that monthly respondent data would be treated as sensitive, proprietary information while respondent data from the annual schedule would not be confidential.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in items II and III. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Would burden be reduced if applicable data were collected in Btu (heat content) rather than Mcf basis (volumetric, as it is on some surveys)?

B. Would burden be increased if EIA adopted a standard mandatory revision rule for its natural gas surveys requiring resubmission of data for revisions greater than 4 percent?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the due date?

E. Public reporting burden for the surveys included in the Natural Gas Data Collection Program Package is shown below as an average hour(s) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate for the proposed forms?

(1) Form EIA–176, ''Annual Report of Natural and Supplemental Gas Supply and Disposition''; 12 hours per response.

(2) Form EIA–191A, ''Annual Underground Gas Storage Report''; 1 hour per response.

(3) Form EIA–191M, ''Monthly Underground Gas Storage Report''; 2.5 hours per response.

(4) Form EIA–857, ''Monthly Report of Natural Gas Purchases and Deliveries to Consumers''; 3.5 hours per response.

(5) Form EIA–895, ''Annual Quantity and Value of Natural Gas Production Report''; .5 hours per response.

(6) Form EIA–910, ''Monthly Natural Gas Marketer Survey''; 2 hours per response.

(7) Form EIA–912, ''Weekly Underground Natural Gas Storage Report''; 0.5 hour per response.

(8) Form EIA–913A, ''Annual Liquefied Natural Gas (LNG) Storage Report''; 1 hour per response.

(9) Form EIA–913M, ''Monthly (September–March) Liquefied Natural Gas (LNG) Storage Report''; 0.5 hour per response.

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

I. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

D. Would the information be more useful if published uniformly in Btu rather than volumetrically? Which is the perceived industry standard?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Authority: Sec. 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, on March 1, 2005.

Jay Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05–4343 Filed 3–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–72–000]

Columbia Gas Transmission Corporation; Notice of Application

February 28, 2005.

Take notice that Columbia Gas Transmission Corporation (Columbia), filed on February 16, 2005 an application under Section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations for permission and approval to abandon four storage wells, together with associated pipeline and appurtenances, located in Ashland Guernsey and Holmes Counties, Ohio, all as more fully set forth in the application on file with the Commission.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273; telephone (304) 357–2359, fax (304) 357–3206.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–909 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–509–000, ER04–509–001, ER04–509–002, ER04–509–003, ER04–509–004, ER04–1250–000, ER04–1250–001, ER04–1250–002, ER04–1250–003, and EL05–62–000]

Delmarva Power & Light Company; PJM Interconnection, LLC; Notice of Initiation of Proceeding and Refund Effective Date

February 28, 2005.

On February 25, 2005, the Commission issued an order in the above-referenced dockets initiating a proceeding in Docket No. EL05–62–000 under section 206 of the Federal Power Act. 110 FERC ¶ 61,186 (2005).

The refund effective date in Docket No. EL05–62–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–911 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–63–002, CP05–75–000]

Tri-State Ethanol Co., LLC; Tri-State Financial Co., LLC d/b/a North Country Ethanol; Notice of Application

February 28, 2005.

Take notice that on February 24, 2005, Tri-State Financial Co., LLC, d/b/a North Country Ethanol, (North Country), 47333 104th Street, P.O. Box 78, Rosholt, South Dakota, 57260, and Tri-State Ethanol Co., LLC, (Tri-State Ethanol) filed with the Commission an application pursuant to section 7(b) and 7(c) of the Natural Gas Act to abandon, by sale, Tri-State Ethanol's facilities, located in Roberts County, South Dakota and Richland County, North Dakota, originally authorized under CP02–63–001, to North Country due to bankruptcy proceedings. North Country also requests temporary authorization, pursuant to § 157.17, to operate the subject facilities. Additionally, North Country seeks Commission approval of the permanent transfer of the certificate of public convenience and necessity issued by the Commission to Tri-State Ethanol in Docket No. CP02–63–001. Also, on February 25, 2005, North Country filed an amendment requesting the Commission to include in any authorizations the ability to transport gas solely on behalf of North Country. Finally, on February 25, 2005, North Country filed a supplement to its application detailing the economic and employment impacts the facilities have on the county in which the facilities are located, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

On February 28, 2002, Tri-State Ethanol was issued a certificate (98 FERC ¶ 61,220 (2002)) to own and the operate subject facilities, consisting of a 10.5-mile, 4.5-inch diameter pipeline, located in Richland County, North Dakota and terminating at Tri-State's ethanol facility near Rosholt, in Roberts County, South Dakota. North Country states that although Tri-State Ethanol received its certificate and approval to place the subject delivery line into service, a fire and explosion at the plant occurred on December 31, 2002, and service on the certificated facilities never commenced. Also, North Country asserts that financial difficulties stemming from the fire and explosion forced Tri-State Ethanol to file on May 23, 2003, with the United States Bankruptcy Court for the District of South Dakota (Northern Div.) in Case No. 03–10194, for reorganization under Chapter 11 of the Bankruptcy Code. On July 29, 2004, the proceeding was converted to a liquidation under Chapter 7 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court. Subsequently, a court-supervised auction of Tri-State Ethanol's assets, including the Plant and certificated delivery line was conducted. On December 22, 2004, the Bankruptcy Court issued an order approving the sale of numerous Tri-State assets to North Country and the transfer of various permits and governmental authorizations related to the acquired assets. The subject application implements the arrangements approved by the Bankruptcy Court.

Any questions concerning the application should be directed to Kevin K. Crago, General Manager, Tri-State Financial Co., LLC, 47333 104th Street, P.O. Box 78, Rosholt, South Dakota, 57260, or call (605) 537–4585.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: March 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–914 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–47–000, et al.]

CER Termobahia, LLC, et al.; Electric Rate and Corporate Filings

February 28, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. CER Termobahia, LLC

[Docket No. EG05–47–000]

Take notice that on February 24, 2005, CER Termobahia, LLC, a Delaware limited liability company (Applicant), with its principal executive office at 1930 Burnt Boat Drive, Bismarck, North Dakota, 58503, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states it will own, in part, a 190 MW natural-gas fired, combined-cycle electrical generating facility located in the State of Bahia, near Salvador, Brazil (the facility). Applicant further states that it will be engaged directly and exclusively in the business of owning and operating an eligible facility and none of the electric energy produced from the facility will be sold into the United States either at retail or otherwise.

Comment Date: 5 p.m. Eastern Time on March 17, 2005.

2. Public Service Company of New Mexico

[Docket Nos. ER96–1551–011, ER01–615–008]

Take notice that on February 18, 2005, Public Service Company of New Mexico (PNM) submitted a filing in response to the Commission's December 20, 2004 order in the above-captioned proceedings. *Public Service Company of New Mexico,* 109 FERC ¶ 61,296 (2004) (December 20 Order). PNM states that the purpose of its filing is to submit revised market power analyses and information as required by the Commission in the December 20 Order.

PNM states that copies of the filing were served on parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

3. Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services, Inc.

[Docket Nos. ER00–2268–010, EL05–10–000, ER99–4124–008, EL05–11–0000, ER00–3312–009, EL05–12–000, ER99–4122–011, EL05–13–000]

Take notice that on February 18, 2005, the Pinnacle West Capital Corporation (PWCC), the Arizona Public Service Company (APS), the Pinnacle West Energy Corporation (PWEC) and APS Energy Services Company, Inc. (APSES) (collectively, Pinnacle West Companies) filed with the Commission a response to the Commission's Order dated December 20, 2004, directing Pinnacle West Companies to provide additional information to the Commission to supplement its market update for authorization to sell at market-based rates and various tariff amendments filed on August 11, 2004.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

4. Frederickson Power L.P.; EPCOR Merchant and Capital (US) Inc.; EPCOR Power Development, Inc.; EPDC, Inc.

[Docket Nos. ER01–2262–005, ER02–783–003, ER02–852–003, ER02–855–003]

Take notice that, on February 22, 2005, Frederickson Power L.P., EPCOR Merchant and Capital (US), Inc., EPCOR Power Development, Inc., and EPDC, Inc. (collectively, the EPCOR Parties) submitted a triennial updated market-based rate analysis.

The EPCOR Parties state that copies of the filing were served on parties on the official service lists in the above-referenced proceedings.

Comment Date: 5 p.m. Eastern Standard Time March 15, 2005.

5. Midwest Independent Transmission System Operator, Inc.; Public Utilities with Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–027, EL04–104–026]

Take notice that on February 23, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's January 24, 2005 Order in *Midwest Independent Transmission System Operator, Inc., et al.*, 110 FERC ¶ 61,049 (2005). The Midwest ISO has requested an April 1, 2005 effective date for the tariff pages submitted in the compliance filing.

The Midwest ISO has requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

6. New England Power Pool

[Docket No. ER04–1255–001]

Take notice that on February 18, 2005 ISO New England Inc. (the ISO) and the New England Power Pool (NEPOOL) Participants Committee submitted a compliance filing, including a report entitled The Costs and Benefits of Implementing a Day-Ahead Load Response Program and revisions to Appendix E to Section III of the ISO's Transmission, Markets and Services Tariff (the Tariff), in response to the requirements of the Commission's December 21, 2004 order in Docket No. ER04–1255–000. NEPOOL and the ISO requested a June 1, 2005 effective date for the revisions to the tariff.

The ISO and the NEPOOL Participants Committee state that copies of the compliance filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions, as well as all parties on the official service lists in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

7. Unitil Energy Systems, Inc.

[Docket No. ER05–320–001]

Take notice that on February 23, 2005, Unitil Energy Systems, Inc. (UES) submitted a compliance filing pursuant to the Commission's order issued on February 2, 2005 in Docket No. ER05–320–000, *Unitil Energy Systems, Inc.,* 110 FERC ¶ 61,089 (2005).

UES states that copies of the filing were served on parties on the official service list in the above-captioned proceeding and on the New Hampshire Public Utility Commission.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

8. Hot Spring Power Company, LP

[Docket No. ER05–570–001]

Take notice that on February 23, 2005, Hot Spring Power Company, LP (Hot Spring) filed a supplement to its application filed February 11, 2005 in Docket No. ER05–570–000 for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

9. Puget Sound Energy, Inc.

[Docket No. ER05–609–000]

Take notice that on February 18, 2005, Puget Sound Energy Inc. (PSE) submitted revised tariff sheets to its open access transmission tariff incorporating the changes directed by the Commission in Order No. 2003-B, *Standardization of Generator Interconnection Agreements and Procedures*, 109 FERC ¶ 61,287 (2004).

PSE states that electronic copies of the filing were served on the Washington Utilities and Transportation Commission and PSE's jurisdictional customers.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

10. PSI Energy, Inc.

[Docket No. ER05–634–000]

Take notice that on February 22, 2005, PSI Energy, Inc. (PSI) tendered for filing the transmission and local facilities agreement for calendar year 2003 reconciliation between PSI and Wabash Valley Power Association, Inc., and between PSI and Indiana Municipal Power Agency, designated as PSI's Rate Schedule FERC No. 253.

Comment Date: 5 p.m. Eastern Time on March 15, 2005.

11. American Electric Power Service Corporation

[Docket No. ER05–635–000]

Take notice that on February 22, 2005, the American Electric Power Service Corporation (AEPSC), tendered for filing an Interconnection and Local Delivery Service Agreement for Blue Ridge Power Association (Blue Ridge), designated as Substitute Service Agreement No. 181, to the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6. AEPSC requests an effective date of February 1, 2005.

AEPSC states that a copy of the filing was served upon the Party and the Virginia Public Service Commission.

Comment Date: 5 p.m. Eastern Time on March 15, 2005.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–636–000]

Take notice that on February 23, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a Large Generator Interconnection Agreement among Columbia Community Windpower LLC, American Transmission Company LLC and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on the parties to this Interconnection Agreement.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

13. Wisconsin Public Service Corporation

[Docket No. ER05–637–000]

Take notice that on February 23, 2005, Wisconsin Public Service Corporation (WPSC) tendered for filing, the actual 2004 values for billing for post-employment benefits (PEB) and post-employment benefits other than pensions (PBOP) in its formula rates for: (1) The W–1A tariff for full requirements service; (2) the W–2A tariff for partial requirements service; and (3) Rate Schedule No. 51 for partial requirements service for the City of Marshfield. WPSC has also requests waiver of the notice requirements to allow it to apply the 2004 PEB and PBOP values to the true-up of these wholesale customers' estimated capacity rate billings for service during 2004 and for estimated billing as of April 1, 2005.

WPSC states that copies of the filing were served upon WPSC's affected wholesale customers, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

14. Illinois Power Company

[Docket No. ER05–638–000]

Take notice that on February 23, 2005, Illinois Power Company (Illinois Power) submitted a Market-Based Rate Tariff authorizing AmerenIP to engage in the sale of electric energy, capacity and firm rights at market-based rates and to reassign transmission capacity rights at negotiated rates. Illinois Power requests an effective date of the later of April 1, 2005, or the first day of the Midwest ISO's Day 2 markets (currently expected to be April 1, 2005).

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

15. Brascan Power Piney & Deep Creek LLC

[Docket No. ER05–639–000]

Take notice that on February 23, 2005, Brascan Power Piney & Deep Creek LLC (Brascan Power PDC) submitted for filing an application for market-based rate authorization to sell energy, capacity, and ancillary services, and reassign transmission capacity and resell firm transmission rights. Brascan Power PDC also requests the waivers and exemptions from regulation typically granted to the holders of market-based rate authorization. In addition, Brascan Power PDC requests waiver of the 60-day prior notice requirement and requests expedited consideration of its application for market-based rate authorization.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

16. Cinergy Services, Inc.

[Docket No. ER05–640–000]

Take notice that on February 23, 2005, Cinergy Services, Inc. (Cinergy Services), on behalf of The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI) and Cinergy Power Investments, Inc. submitted for filing a revised Joint Generation Dispatch Agreement between PSI and CG&E.

Cinergy Services states that copies of the filing were served upon the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. Eastern Time on March 16, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–904 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–32–000 and CP05–32–001]

Northwest Pipeline Corporation; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Capacity Replacement Project

March 1, 2005.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared a draft environmental impact statement (EIS) on the natural gas pipeline facilities and abandonment activities proposed by Northwest Pipeline Corporation (Northwest) in the above-referenced docket. The Capacity Replacement Project would be located in various counties in Washington.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

The U.S. Army Corps of Engineers (COE) is participating as a cooperating agency in the preparation of the EIS because the project would require permits pursuant to section 404 of the Clean Water Act (33 United States Code (U.S.C.) 1344) and section 10 of the Rivers and Harbors Act (33 U.S.C. 403). The COE would adopt the EIS pursuant to Title 40 Code of Federal Regulations (CFR) Section 1506.3 if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The Washington State Department of Ecology (WDOE) is participating as a cooperating agency in the preparation of the EIS because it has been designated the lead agency under the State Environmental Policy Act (SEPA) and is responsible for compliance with SEPA procedural requirements as well as for compiling and assessing information on the environmental aspects of the proposal for all agencies with jurisdiction in Washington. NEPA documents may be used to meet SEPA requirements if the requirements of the State of Washington Administrative Code (WAC) 197–11–610 and 197–11–630 are met. In compliance with SEPA requirements, this Notice of Availability includes the information required for a SEPA EIS Cover Letter and Fact Sheet. When the final EIS is completed, the WDOE would adopt it if an independent review of the document confirms that it meets the WDOE's environmental review standards.

The purpose of the Capacity Replacement Project is to replace the majority of the delivery capacity of Northwest's existing 268-mile-long, 26-inch-diameter pipeline between Sumas and Washougal, Washington in response to a Corrective Action Order issued by the U.S. Department of Transportation. The proposed facilities are designed to provide up to 360 thousand dekatherms per day of natural gas transportation capacity.

This draft EIS addresses the potential environmental effects (beneficial and adverse) of Northwest's proposal to:

- Construct and operate 79.5 miles of new 36-inch-diameter pipeline in 4 separate loops [1] in Whatcom, Skagit, Snohomish, King, Pierce, and Thurston Counties;
- Modify 5 existing compressor stations, one each in Whatcom, Skagit, Snohomish, Lewis, and Clark Counties for a total of 10,760 net horsepower of new compression;
- Install various pig [2] launchers, pig receivers, and mainline valves;
- Abandon the existing 26-inch-diameter pipeline between Sumas and Washougal with the exception of a short segment within and between the existing Jackson Prairie Meter Station and the Chehalis Compressor Station; and
- Use 13 pipe storage and contractor yards on a temporary basis to support construction activities.

Northwest proposes to begin construction in March 2006 [3] and place the facilities in service by November 1, 2006. Abandonment of the 26-inch-diameter facilities that are currently in service cannot be completed until the Capacity Replacement Project is placed in service. All abandonment activities would be completed on or before December 31, 2006.

The FERC, the COE, and the WDOE have three alternative courses of action in considering Northwest's proposal. These options include granting authorizations with or without conditions, denying authorizations, or postponing action pending further study. In accordance with the Council on Environmental Quality (CEQ) regulations implementing NEPA, no agency decision on the proposed action may be made until 30 days after the U.S. Environmental Protection Agency (EPA) publishes a Notice of Availability of the final EIS in the **Federal Register**. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process that allows other agencies or the public to make their views known. This is the case at the FERC, where any Commission decision on the proposed action would be subject to a 30-day rehearing period. Therefore, the lead agency decision may be made at the same time that notice of the final EIS is published by the EPA, allowing the appeal periods to run concurrently.

After notice of the final EIS is published by the EPA, the COE would issue its own Record of Decision (ROD) adopting the EIS. The ROD would include the COE's section 404(b)(1) analysis. After issuance of the ROD, the COE could issue the section 404 and section 10 permits.

After the final EIS is issued, the WDOE would adopt it by identifying the document and stating why it is being adopted using the adoption form in WAC 197–11–965. The adoption form would be circulated to agencies with jurisdiction and to persons or organizations that have expressed an interest in the proposal. No action may be taken on the proposal until 7 days after the statement of adoption form has been issued. Once the 7-day waiting period is completed, the WDOE could begin issuing permits. Other state and local agencies cannot issue permits until the adoption procedure is complete.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[3] Northwest has requested that three river crossings be authorized to begin in late 2005 if weather permits.

The key environmental issues facing the agency decision makers relate to impacts on residential areas, waterbodies, and wetlands. These issues are addressed in the draft EIS. The draft EIS also evaluates alternatives to the proposal, including system alternatives, new pipeline corridors, and alternative configurations of Northwest's system; route variations and non-standard parallel offsets; abandonment alternatives; and construction method alternatives. The permits, approvals, and consultations required for the project are listed in section 1.5 of the draft EIS; Appendix T lists the authors and principal contributors to the draft EIS.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To expedite the FERC staff's receipt and consideration of your comments, the Commission strongly encourages electronic submission of comments on the draft EIS. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of submission you are making. This type of submission is considered a ''Comment on Filing.'' Your comments must be submitted electronically by April 25, 2005.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC, on or before April 25, 2005 and carefully follow these instructions:

Send an original and two copies of your letter to:

- Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Reference Docket Nos. CP05–32–000, –001 on the original and both copies; and
- Label one copy of your comments for the attention of the Gas Branch 2, DG2E.

In addition to or in lieu of sending written comments, you are invited to attend the public comment meetings the FERC staff will conduct in the project area. All meetings will begin at 7 p.m. (PST), and are scheduled as follows:

Date	Location
Monday, April 11, 2005.	Hawthorn Inn & Suites, 16710 Smokey Point Blvd., Arlington, WA 98223, (360) 657–0500.
Tuesday, April 12, 2005.	Marriott Redmond Town Center, 7401 164th Avenue, NE., Redmond, WA 98052, (425) 498–4120.
Wednesday, April 13, 2005.	Prairie Hotel, 700 Prairie Park Lane, Yelm, WA 98597, (360) 458–8300.

These meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the FERC staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[4] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC, the COE, and the WDOE and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 502–8371.

U.S. Army Corps of Engineers, Seattle District Library, 4735 East Marginal Way South, Seattle, WA 98134, (206) 764–3728.

Washington State Department of Ecology, Northwest Regional Office, Central File Room, 3190 160th Avenue, SE., Bellevue, WA 98008, (425) 649–7190 or (425) 649–7239.

Washington State Department of Ecology, Southwest Regional Office, Central File Room, 300 Desmond Drive, Lacey, WA 98503, (360) 407–6365.

The draft EIS is also available for viewing on the WDOE's Internet Web site at *http://www.ecy.wa.gov/programs/sea/nw_capacity_replacement.*

A limited number of copies are available from the FERC's Public Reference Room identified above, at no cost to the public. In addition, copies of the draft EIS have been mailed to Federal, State, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; and other interested parties (*i.e.*, landowners, miscellaneous individuals, and environmental groups who provided scoping comments or asked to remain on the mailing list).

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the COE is available from Olivia Romano at (206) 764–6960. Information concerning the involvement of the WDOE is available from Tiffany Yelton at (425) 649–4310.

Magalie R. Salas,

Secretary.

[FR Doc. E5–906 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–55–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cunningham Withdrawal Wells Project and Request for Comments on Environmental Issues

March 1, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cunningham Withdrawal Wells Project involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Pratt and Kingman Counties, Kansas.[1] These facilities would consist of two withdrawal wells, associated pipeline and 200 horsepower (hp) of electrically powered compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Northern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Based on recent testing and analyses, Northern has determined that gas is migrating away from its Cunningham Storage Field. Northern is seeking authorization to construct and operate two additional withdrawal wells and associated facilities to recapture the gas and integrate it into its existing pipeline infrastructure. Specifically, Northern proposes to install two new wells (#19–14 and #24–42), associated surface equipment, two sections totaling 4,500 feet of 4-inch-diameter gas pipeline, two sections totaling 3,700 feet of 3-inch-diameter liquid pipeline, and a 200 horsepower electrical compressor unit.

To support these facilities, Northern would use a temporary workspace of about 500 square feet at each well site and would permanently use a 100-foot by 200-foot rock or gravel pad and a 50-foot by 360-foot ground bed at each well site. Northern would also use 20-foot wide rock or gravel driveways for access to the well sites.

The proposed facilities would operate within the existing certified parameters of the Cunningham Storage Field.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 29.0 acres of land. Following construction, about 0.9 acre would be maintained as new aboveground facility sites and 1.3 acres would be maintained as access roads. The remaining 26.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- A potential surface water feature that could potentially contain Arkansas darter habitat may be located within the project area.
- The installation of additional compression may contribute to an increase in noise levels at nearby noise sensitive areas.
- Topsoil separation, restoration and revegetation may need to be addressed through specific mitigation measures.

[1] Northern's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposed locations, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05–55–000.
- Mail your comments so that they will be received in Washington, DC on or before March 30, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–905 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2738–054]

New York State Electric & Gas Corporation; Notice Soliciting Scoping Comments

February 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2738–054.

c. *Date Filed:* April 4, 2004.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Saranac River Hydroelectric Project.

f. *Location:* On the Saranac River, in Clinton County, New York. This project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Hugh Ives, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghampton, NY 13902, (585) 724–8209.

i. *FERC Contact:* Tom Dean, (202) 502–6041 or *thomas.dean@ferc.gov*.

j. *Deadline for Filing Scoping Comments:* March 31, 2005.

All Documents (Original and Eight Copies) Should Be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly

encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The project consists of the following four developments:

The High Falls Development consists of the following existing facilities: (1) A 63-foot-high, 274-foot-long concrete gravity dam with spillway topped with 5-foot-high flashboards; (2) a 110-foot-long eastern wingwall and a 320-foot-long western wingwall; (3) a 46-acre reservoir; (4) an 800-foot-long, 19-foot-wide forebay canal; (5) an 11-foot by 12-foot, 3,581-foot-long tunnel; (6) a 10-foot-diameter, 1,280-foot-long penstock; (7) three 6-foot-diameter, 150-foot-long penstocks; (8) a 30-foot-diameter surge tank; (9) a powerhouse containing three generating units with a total installed capacity of 15,000 kW; (10) a 50-foot-long, 6.9-kV transmission line; and (11) other appurtenances.

The Cadyville Development consists of the following existing facilities: (1) A 50-foot-high, 237-foot-long concrete gravity dam with spillway topped with 2.7-foot-high flashboards; (2) a 200-acre reservoir; (3) a 58-foot-long, 20-foot-wide intake; (4) a 10-foot-diameter, 1,554-foot-long penstock; (5) a powerhouse containing three generating units with a total installed capacity of 5,525 kW; (6) a 110-foot-long, 6.6-kV transmission line; and (7) other appurtenances.

The Mill C Development consists of the following existing facilities: (1) A 43-foot-high, 202-foot-long stone masonry dam with spillway topped with 2-foot-high flashboards; (2) a 7.9-acre reservoir; (3) a 37-foot-long, 18-foot-wide intake; (4) a 11.5-foot to 10-foot-diameter, 494-foot-long penstock; (5) a 11.1-foot to 10-foot-diameter, 84-foot-long penstocks; (6) one powerhouse containing two generating units with a total installed capacity of 2,250 kW; (7) another powerhouse containing a single generating unit with an installed capacity of 3,800 kW; (8) a 700-foot-long, 6.6-kV transmission line; and (9) other appurtenances.

The Kents Falls Development consists of the following existing facilities: (1) A 59-foot-high, 172-foot-long concrete gravity dam with spillway topped with 3.5-foot-high flashboards; (2) a 34-acre reservoir; (3) a 29-foot-long, 22-foot-wide intake; (4) an 11-foot-diameter, 2,652-foot-long penstock; (5) three 6-foot-diameter, 16-foot-long penstocks; (6) a 28-foot-diameter surge tank; (7) a powerhouse containing two generating units with a total installed capacity of 12,400 kW; (8) a 390-foot-long, 6.6-kV transmission line; and (9) other appurtenances.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* The Commission staff intends to prepare an Environmental Assessment (EA) for the Saranac River Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives in the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–908 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11858–002]

Elsinore Municipal Water District and the Nevada Hydro Company, Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major unconstructed project.

b. *Project No.:* 11858–002.

c. *Date Filed:* February 2, 2004.

d. *Applicant:* Elsinore Municipal Water District and the Nevada Hydro Company, Inc.

e. *Name of Project:* Lake Elsinore Advanced Pumped Storage Project.

f. *Location:* On Lake Elsinore and San Juan Creek, in the Town of Lake Elsinore, Riverside County, California. The project would occupy Federal lands, including lands managed by the Forest Service (Cleveland National Forest), Bureau of Land Management, and the Department of Defense (Camp Pendleton).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rexford Wait, The Nevada Hydro Company, 2416 Cades Way, Vista, California 92083, (760) 599–0086.

i. *FERC Contact:* Jim Fargo at (202) 502–6095; e-mail *james.fargo@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may

be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed project would consist of: (1) A new upper reservoir (Morrell Canyon) having a 180-foot-high main dam and a gross storage volume of 5,750 feet, at a normal reservoir surface elevation of 2,880 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 30 miles of 500 kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Magalie R. Salas,

Secretary.

[FR Doc. E5–912 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12514–000]

Northern Indiana Public Service Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original major license.

b. *Project No.:* 12514–000.

c. *Date Filed:* June 28, 2004.

d. *Applicant:* Northern Indiana Public Service Company.

e. *Name of Project:* Norway and Oakdale Hydroelectric Project.

f. *Location:* On the Tippecanoe River in Carroll and White Counties, Indiana. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jerome B. Weeden, Vice President Generation; Northern Indiana Public Service Company; 801 East 86th Avenue; Merrillville, IN 46410; (219) 647–5730.

i. *FERC Contact:* Sergiu Serban at (202) 502–6211, or *sergiu.serban@ferc.gov.*

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the date of this notice.

All Documents (Original and Eight Copies) Should be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.''

k. *Status:* This application has been accepted for filing but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing Norway Oakdale Hydroelectric Project consists of the Norway development and the Oakdale development and has a combined installed capacity of 16.4 megawatts (MW). The project produces an average annual generation of 65,000 megawatt-hours (MWh). All power is dispatched directly into the local grid and is used within the East Central Area Reliability Coordination Agreement.

The Norway development includes the following constructed facilities: (1) A 915-foot-long dam consisting of a 410-foot-long, 34-foot-maximum-height earthfill embankment with a concrete corewall; a 225-foot-long, 29-foot-high concrete gravity overflow spillway with flashboards; a 120-foot-long, 30-foot-high concrete gated spillway with three 30-foot wide, 22-foot-high spillway gates; a 18-foot-wide, 30-foot-high trash sluice housing with one 8-foot-wide, 11-foot-high gate; and a 142-foot-long, 64-foot-wide powerhouse integral with the dam containing four vertical Francis turbines-generating units with a rated head of 28 feet, total hydraulic capacity of 3,675 cubic feet per second (cfc) and a total electric output of 7.2 MW; (2) a 10-mile-long, 10-foot average depth, 1,291-acre reservoir; (3) a two-mile-long 69,000 volt transmission line; and (4) appurtenant facilities.

The Oakdale development includes the following constructed facilities: (1) A 1688-foot-long dam consisting of a 126-foot-long, 58-foot-maximum-height east concrete buttress and slab dam

connecting the left abutment to the powerhouse; a 114-foot-long, 70-foot-wide powerhouse integral with the dam containing three vertical Francis turbines-generating units with a rated head of 42 to 48 feet, total hydraulic capacity of 3,200 cubic feet per second (cfc) and a total electric output of 9.2 MW; an 18-foot-wide structure containing a nonfunctional fish ladder and a gated trash sluice; a 84-foot-long ogee-shaped concrete gated spillway with two 30-foot wide, 22-foot-high vertical lift gates; a 90-foot-long, six bay concrete gravity siphon-type auxiliary spillway; and a 1,260-foot-long west earth embankment with a maximum height of 58 feet and a 30-foot-wide crest; (2) a 10-mile-long, 16-foot average depth, 1,547-acre reservoir; and (3) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–12514), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–913 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000 and CP04–293–000]

KeySpan LNG, L.P.; Notice of Meeting

March 1, 2005.

At the request of U.S. Senators Lincoln Chafee and Jack Reed, and U.S. Representatives Patrick Kennedy and James Langevin, Chairman Pat Wood will meet with the above parties to receive comments on KeySpan LNG, L.P.'s proposed liquefied natural gas (LNG) facility upgrade in Providence, Rhode Island. This meeting will also be attended by Rhode Island Attorney General Patrick Lynch and Providence Mayor David Cicilline. The meeting will be held at the FERC headquarters at 888 First Street NE; Washington, DC, from 9 to 10 a.m. (EST), Thursday, March 17, 2005.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information please contact David Swearingen at (202) 502–6173 or e-mail *david.swearingen@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–907 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2330–029, ER02–2330–033, ER04–1255–000, ER04–1255–001, EL04–102–004, ER03–563–025, RT04–2–012, ER04–116–012, RT04–2–010, ER04–157–012, EL01–39–010, and ER05–439–000]

New England Power Pool and ISO New England Inc., ISO New England Inc., Devon Power LLC, et al., ISO New England, Inc. and Bangor Hydro, et al., ISO New England, Inc. and Bangor Hydro, et al., ISO New England, Inc.; Supplemental Notice of Technical Conference

February 28, 2005.

As announced in a Notice of Technical Conference issued on January 28, 2005, in the above referenced proceedings, a technical conference will be held on March 4, 2005, from 10 a.m. to 4 p.m. (e.s.t.) at the Seaport World Trade Center (Harborview Ballroom), 200 Seaport Boulevard, in Boston, Massachusetts. Members of the Commission and staff are expected to participate. The purpose of the conference is to discuss market improvements currently being considered by ISO New England Inc. and market participants in New England. Attached is the agenda for the conference.

The conference is open for the public to attend and preregistration is not required; however, attendees are asked to register for the conference on-line by close of business on Wednesday, March 2, at *http://www.ferc.gov/whats-new/registration/iso-03-04-form.asp.* Attendees may also register on-site.

Transcripts of the conference will be immediately available from Ace Reporting Company (202) 347–3700 or

1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after the Commission receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For additional information, please contact Anna Cochrane at (202) 502–6357; *anna.cochrane@ferc.gov,* or Sarah McKinley at (202) 502–8004; *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

New England Power Pool and ISO New England Inc.

Docket No. ER02–2330–029

Boston, Massachusetts

March 4, 2005

Technical Conference Agenda

10 a.m.—Opening Remarks and Introductions

Wholesale Markets Overview
- Gordon van Welie, Chief Executive Officer, ISO New England Inc.
- Donald Sipe, Chairman, NEPOOL Participants Committee

Roundtable Discussion on Implementation Sequence
- Vamsi Chadalavada, Senior Vice President, Market and System Solutions, ISO–NE
- Daniel Allegretti, Vice President Regulatory, Contellation Energy Commodities Group, Inc.
- Robert Weishaar, McNees Wallace & Nurick, on behalf of NEPOOL Industrial Customer Coalition
- Carmel Gondek, Manager, Retail Access Planning and Support, Northeast Utilities Service Co.
- Paul Peterson, Synapse Energy Economics, Inc. on behalf of New Hampshire Officer of Consumer Advocate and Connecticut Office of Consumer Counsel

Lunch Break

12:30 p.m.—Ancillary Services Market Design—Overview

- Charles Ide, NEPOOL Markets Committee Chair, ISO–NE
- Eric Stinneford, NEPOOL Markets Committee Vice-Chair, Central Maine Power
- Marc Montalvo, Manager, Markets Development, ISO–NE

Roundtable Discussion on Ancillary Services Market Design

- Joseph Staszowski, Director, Generation Resource Planning & Cogen. Admin., Northeast Utilities Services Co.
- Timothy Peet, Massachusetts Municipal Wholesale Electric Co.
- Robert Stein, Signal Hill Consulting Group, on behalf of HydroQuebec US
- Thomas Kaslow, Calpine Energy Services
- Thomas Atkins, Pinpoint Power LLC and New England Demand Response Providers
- Paul Peterson, Synapse Energy Economics, Inc. on behalf of New Hampshire Office of Consumer Advocate and Connecticut Office of Consumer Counsel
- Robert Weishaar, McNees, Wallace & Nurick, on behalf of NEPOOL Industrial Customer Coalition
- Timothy Brennan, National Grid USA
- Joel Gordon, Director, Market Policy, PSEG Energy Resources & Trade LLC
- Peter Fuller, Director, Market Affairs, Mirant Americas Energy Marketing, LP

3:30 p.m.—Closing Remarks

4 p.m.—Adjourn

[FR Doc. E5–910 Filed 3–4–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7881–3]

Partnership To Promote Innovation in Environmental Practice, Notice of Availability and Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of solicitation for proposals.

SUMMARY: The Environmental Protection Agency's National Center for Environmental Innovation (NCEI) is giving notice of the availability of its solicitation for proposals from institutions that are interested in promoting innovations that can improve environmental results from State and Federal programs. EPA is seeking proposals to explore innovative environmental policies practices and to support mechanisms by which new approaches can be shared and discussed by federal and state environmental practitioners. The goal is to increase understanding of new approaches, to facilitate use of proven concepts, and to encourage more innovation in environmental programs. EPA anticipates awarding one cooperative agreement under this solicitation. The amount of the award will be $300,000 for a period of up to four years. Eligible recipients include States, territories, Indian Tribes, interstate organizations, intrastate organizations, and possessions of the U.S., including the District of Columbia, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions, and individuals. Nonprofit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply. For profit organizations are generally not eligible for funding.

DATES: Interested applicants have until April 21, 2005 to submit a proposal.

ADDRESSES: Due to heightened security requirements, there may be substantial delays in mail service to EPA Hence, EPA strongly encourages applicants to send applications electronically. Electronic applications must be sent to *State_Innovation_Grants@epa.gov.* Applicants choosing to submit paper applications should mail one original and two copies to the EPA contact, Sandy Germann. Please also note that the delivery address varies depending on whether you are using regular mail or using a delivery service (*e.g.*, Federal Express, Courier, UPS). If you are using a delivery service, send it to Sandy Germann, U.S. EPA, U.S. EPA, Room 645C, 4930 Page Road, Research Triangle Park, NC 27703. If you are sending the application via regular mail, send it to Sandy Germann, U.S. EPA, MC C604–02, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Sandy Germann, U.S. EPA, MC C604–02, RTP, NC 27711, (919 541–3061), *germann.sandy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA's National Center for Environmental Innovation (NCEI) promotes new ways to achieve better environmental results. NCEI's work includes developing and testing new approaches, evaluating how well new approaches work, and sharing and applying the lessons learned to improve the efficiency and effectiveness of environmental programs. Consistent with EPA's Innovation Strategy (*http://www.epa.gov/innovation/strategy.htm*), NCEI is especially interested in supporting State innovation. In 2000, EPA sponsored the first State/EPA

Environmental Innovation Symposium to showcase environmental innovations that can improve environmental results in State programs. A second symposium was held in 2003. (Information about these events can be found at *http://www.epa.gov/innovation/symposia.htm.*) Evaluations from these events, along with discussion with State commissioners, indicate that States have a strong interest in additional symposia that allow them to share experiences and results from innovative environmental programs and policies.

While EPA will have participants at the symposia, the primary goal of this project is to identify and highlight environmental innovations that can help States learn about new ways to achieve better environmental results. To this end, the project should be designed to:

—Identify and showcase successful, innovative projects and programs that have accomplished important environmental results at the Federal, state, and local levels;
—Facilitate information transfer so that proven approaches can be used by other States and federal programs to achieve environmental results;
—Stimulate ideas for new innovative initiatives and pilot projects;
—Enable discussion about specific issues facing innovators, such as how to replicate successful innovations on a larger scale (*e.g.*, from a pilot project at one facility to a program for the entire sector) or in other programs (*e.g.*, from use in the air program to the water program), and how to sustain innovations over time so that projects continue evolving to reflect new knowledge, experience, and/or technology;
—Expand the network of State and federal environmental practitioners who are interested in applying and advancing new approaches to environmental protection.

The work will involve planning up to two symposia over a four-year period that bring together State and EPA environmental practitioners to share information and engage in a dialogue about experiences and policy issues related to innovative approaches. Planning will be done by a Steering Committee consisting of representatives from the recipient, EPA and States. The Steering Committee, which will have a majority State membership, will assist with analyzing environmental innovations, developing symposia agendas, identifying appropriate speakers and presenters, and promoting the event within their respective organizations.

EPA is interested in supporting the first symposia in late 2005, and a second symposium approximately two years later. In addition to organizing the symposia, the recipient will compile all information presented at the symposia on a publicly available web site. These resources will help extend the learning that occurs at the symposia to other State and EPA employees, as well as other interested stakeholders.

For the full solicitation, please visit: *www.epa.gov/innovation/symposia.*

Dated: February 18, 2005.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 05–4261 Filed 3–4–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for Public Comment on Draft Fiscal Year 2005, Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the Draft Fiscal Year 2005 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This solicitation contains a change in the application process in an effort to maximize participation under current budget constraints. In the past, applicants were required to submit applications by a fixed date. In Fiscal Year 2005, the date for application submission will be open, contingent upon fund availability. Applications will be accepted for consideration after May 15, 2005 and all funds will be awarded by September 30, 2006.

ADDRESSES: Jane A. Lorber, Director, Labor Management Grants Program, FMCS 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Jane A. Lorber, (202) 271–8868.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2005

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 2005 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern

not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction.

An industry committee generally consists of a collection product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and mangers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2005, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.,* job training, mediation of contract disputes, etc.)

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee will accomplish during the life of the grant. Applicants that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacted will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.,* members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to pay for exisiting employees; and assurance that grant funds will not be used to pay for existing employees;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishment (process and impact) will be completed by month over the life of the grant using ''month one'' as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

(5) *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the function of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB Circular 110 *i.e.* ''contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be *excluded* (emphasis added from competing for such procurements.

Applicants who received funding under this program in the last 6 years for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

Allocations

The FY2005 appropriation for this program is $1,488,000 of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that when possible and where merited, two awards will be made in each category (company/plant, industry, public sector, and area) depending upon applications submitted. After these applications are considered to award, the remaining applications will be considered according to merit without regard to category.

In addition, to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support aplications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

FMCS reserves the right to retain up to five percent of the FY2005 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specified period, these grants may be extended for up to six months. The dollar range of awards is as follows:

—Up to $65,000 over a period of up to 18 months to company/plant committees or single department public sector applicants;

—Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures *represent maximum Federal funds only.* If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their appilcations. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal

funds. Funds generated by grant-suppported efforts are considered ''project income,'' and may not be used for matching purposes.

It is the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2005 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

G. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form, representatives may be type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. We will accept applications beginning May 15, 2005 and continue to do so until all FY 2005 grant funds have been obligated, with awards being made by September 30, 2006. While proposals may be accepted at any time between May 15, 2005 and September 30, 2006, proposals received late in the cycle have a greater risk of not being funded due to unavailability of funds. Offerors are highly advised to contact the grants director prior to committing any resources to the preparation of a proposal. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions. FMCS will confirm receipt of all applications within 10 days thereof.

All eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director, Labor-Management Grants Program, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available once the application has been submitted.

All FY2005 grant applicants will be notified of results and all grant awards will be made September 30, 2006. Applications that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants Program.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*http://www.fmcs.gov*) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427 at (202) 606–8181, (202) 271–8868 or *jlorber@fmcs.gov.*

Fran Leonard,

Director, Budget and Finance, Federal Mediation and Conciliation Service.

[FR Doc. 05–4292 Filed 3–4–05; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: March 3, 2005, 9 a.m.–3 p.m., March 4, 2005, 10 a.m.–3:15 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 505A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates and status reports from the Department on topics including Clinical Data Standards, the Consolidated Health Informatics Initiative, and the HIPAA Privacy Rule compliance. In the afternoon the Committee will hear an update on the National Health Information Infrastructure and will discuss various materials prepared by NCVHS Subcommittees.

On the second day the Committee will hear an updated from the Board of Scientific Counselors at the National Center for Health Statistics (NCHS) and reports on two HHS initiatives in geocoding. The Committee with also discuss plans for its annual report to Congress and there will be reports from the Subcommittees and a discussion of agendas for future Committee meetings.

The times shown above are for the full committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 1, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–4311 Filed 3–4–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity Number: RFA 05045]

Academic Partners Public Health Training Grant; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for a grant to: (a) provide trainees the opportunity to learn about broad, cross-cutting public health policy and program development at the Federal, state and local government level and (b) make progress toward achieving the prevention objectives of Healthy People 2010 was published in the **Federal**

Register on February 15, 2005, Vol. 70, No. 30, pages 7739–7744.

The notice is amended as follows: On page 7740, Column 1, First line: change to ''Application Deadline: April 1, 2005.'' On page 7743, Column 1, Section 1V.5, please include a third bullet that states: Indirect costs cannot exceed 8% of the total direct cost.

Dated: March 1, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–4315 Filed 3–4–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700,

(Formerly: NOVAMANN (Ontario) Inc.)
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Toxicology, a LabOne Company, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–293–2300/800–322–3361 (Formerly: LabOne, Inc., d/b/a Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)
One Source Toxicology, Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897x7
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 /800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,
Executive Officer, SAMHSA.

[FR Doc. 05–4317 Filed 3–4–05; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Homeland Security Advisory Council

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will hold a meeting for the purposes of receiving reports and briefings, and holding member deliberations. The HSAC will receive reports from: the HSAC Task Force on Intelligence and Information Sharing and State Fusion Centers, Chaired by Governor Mitt Romney, Governor of Massachusetts; the HSAC Task Force on Private Sector Information Sharing, Chaired by Mayor Patrick McCrory, Mayor of Charlotte, North Carolina; the HSAC Task Force on Critical Infrastructure Protection and Resilience, Chaired by Dr. Ruth David, CEO of Analytic Services, Inc.; and the HSAC Task Force on the Prevention of Weapons of Mass Effect Attacks on American Soil, Chaired by Dr. Lydia Thomas, CEO of Mitretek Systems. Additionally, the HSAC will receive detailed briefings covering specific critical infrastructure vulnerabilities, interdependencies, infrastructure resilience, and vulnerability mitigation. The HSAC will also hold roundtable deliberations and discussions among HSAC members.

DATES: This meeting will be held in Charlotte, North Carolina on Tuesday, March 22, 2005.

ADDRESSES: This meeting will be partially closed; the open portions of the meeting for the purpose of receiving the Task Force reports listed above will be held at the Westin Charlotte, 601 South College Street, Charlotte, NC 28202 in

Grand Ballroom ''D'' from 9:30 a.m. to 11:30 a.m. The closed portions of the meeting, for the purposes of addressing administrative matters and receiving the detailed critical infrastructure briefings listed above will be held in a separate venue closed to the public at the Westin Charlotte, 601 South College Street, Charlotte, NC 28202 from 11:45 a.m. to approximately 3 p.m.

You may submit comments, identified by docket number, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site. The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA (legacy Department of Transportation (DOT) agencies) will continue to use the DOT Docket Management System until full migration to the electronic rulemaking Federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *HSAC@dhs.gov.* Include docket number in the subject line of the message.
- Fax: (202) 772–9718.
- Mail: Mike Miron, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning the meeting, please contact Mike Miron or an Executive Staff Member of the HSAC via e-mail at *HSAC@dhs.gov,* or via phone at 202–692–4283.

SUPPLEMENTARY INFORMATION:

Public Attendance: A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her name and date of birth no later than 5 p.m., e.s.t., Tuesday, March 15, 2005, to Mike Miron or an Executive Staff Member of the HSAC via e-mail at *HSAC@dhs.gov,* or via phone at (202) 692–4283. Persons with disabilities who require special assistance should indicate so in their admittance request and are encouraged to indicate their desires to attend and anticipated special needs as early as possible. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 9:15 a.m.

Basis for Closure: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. 1 *et seq.*), the Secretary has issued a determination that portions of this HSAC meeting (referenced above as ''closed'') will concern matters excluded from Open Meetings requirements.

In particular, the administrative portion of the meeting will be conducted ''solely to discuss administrative matters of the advisory committee.'' Accordingly, it will be closed pursuant to 41 CFR 102–3.160(b).

At portions of the meeting where the committee will be addressing specific critical infrastructure vulnerabilities; interdependencies; infrastructure resilience; vulnerability mitigation; and investigative strategies designed to identify and expose money laundering schemes to prosecution. Discussions will include trade secrets and commercial or financial information that is privileged or confidential, and matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action which has not been disclosed to the public nor is required by law to be disclosed to the public. Accordingly, the Secretary has determined that these portions of the meeting must be kept closed as well, pursuant to 5 U.S.C. app. 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(9)(B).

Dated: March 2, 2005.

Michael Chertoff,

Secretary of The Department of Homeland Security.

[FR Doc. 05–4381 Filed 3–4–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20457]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0013, 1625–0032, 1625–0037, 1625–0041, and 1625–0042

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) 1625–0013, Plan Approval and Records for Load Lines, (2) 1625–0032, Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code, (3) 1625–0037, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers, (4) 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates, and (5) 1625–0042, Requirements for Lightering of Oil and Hazardous Material Cargoes. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before May 6, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–20457] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery 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. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part

of this docket and will be available for inspection or copying at 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 also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814 for questions on these documents; or telephone Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–20457], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them 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 and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Requests

1. *Title:* Plan Approval and Records for Load Lines.

OMB Control Number: 1625–0013.

SUMMARY: This information collection is required to ensure that certain vessels are not loaded deeper than appropriate for safety. Vessels over 150 gross tons or 79 feet in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate. This collection also incorporates the Great Lakes load lines rule.

Need: Title 46 U.S.C. 5501 to 5516 provides the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. Title 46 CFR Part E—Load Lines contains the relevant regulations.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 1,979 hours to 1,681 hours a year.

2. *Title:* Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code.

OMB Control Number: 1625–0032.

Summary: This collection of information requires owners, operators, agents or masters of certain inspected vessels to obtain and/or post various forms as part of the Coast Guard's Commercial Vessel Safety Program.

Need: The Coast Guard's Commercial Vessel Safety Program regulations are found in 46 CFR, as authorized in Title 46 U.S. Code. A number of reporting and recordkeeping requirements are contained therein.

Respondents: Owners, operators, agents and masters of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 1,578 hours to 1,471 hours a year.

3. *Title:* Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 1625–0037.

Summary: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46, U.S. Code. It is solely for this purpose. The affected public includes some owners or operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Need: Title 46 U.S.C. 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. These regulations are prescribed in Title 46 Code of Federal Regulations. The requirements for reporting Boiler/Pressure Valve Repairs, maintaining Cargo Gear Records, maintaining Shipping Papers, and issuance of Certificates of Compliance (CG–3585) provide the marine inspector with available information as to the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 17,555 hours to 13,577 hours a year.

4. *Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Summary: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), these certificates and documents are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: Compliance with MARPOL 73/78 aids in the prevention of pollution from ships.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has been increased from 6,780 hours to 6,874 hours a year.

5. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 1625–0042.

Summary: The information for this report allows the U.S. Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: Title 46 U.S.C. 3715 authorizes the Coast Guard to establish lightering regulations. Title 33 CFR 156.200 to 156.330 prescribes the Coast Guard regulations for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has been increased from 228 hours to 324 hours a year.

Dated: February 28, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–4295 Filed 3–4–05; 8:45 am]

BILLING CODE 4915–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species

DATES: Written data, comments or requests must be received by April 6, 2005.

ADDRESSES: 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, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mitchel Kalmanson, Maitland, FL, PRT–093437, 093438, 093439, 094810, 094812, 094813

The applicant requests permits to export three male and two female tigers (*Panthera tigris*) and 2 female Bengal x Siberian tigers (*Panthera tigris tigris* x P.t. *altaica*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 093437—Capitan, 093438—Coronel, 093439—Teniente, 094810—Bailey, 094812—Savanna, 094813—Shakanna. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: February 25, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–4353 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 6, 2005.

ADDRESSES: 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, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Leon Barringer, Monument, CO, PRT–099123

The applicant requests a permit to export one male captive-born tiger *(Panthera tigris)* to the Baghdad Zoo, Iraq, for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Zoological Society of San Diego, Escondido, CA, PRT–098763

The applicant requests a permit to export biological samples from Northern white rhinoceros *(Ceratotherium simum cottoni)* to the Dvur Kralove Zoo, Dvur Kralove, Czech Republic, for the purpose of enhancement of the survival of the species through captive propagation. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Cynthia J. Lagueux, Wildlife Conservation Society, Gainesville, FL, PRT–781606

The applicant requests a renewal of their permit to import biological samples from Hawksbill sea turtles *(Eretmochelys imbricata)* and Leatherback sea turtles *(Dermochelys coriacea)* collected in the wild in Nicaragua, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Thane Wibbels, University of Alabama, Birmingham, AL, PRT–841026

The applicant requests a renewal of their permit to import biological samples from Kemp's ridley sea turtles *(Lepidochelys kempii)* collected in the wild in Mexico, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Dated: February 18, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–4354 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: 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, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
094471	Nicholas A. Russo, Sr	69 FR; 77262; December 27, 2004	January 25, 2005.
095498	Lloyd B. Alford	69 FR 70703; December 7, 2004	January 11, 2005.
064189	Texas A & M University	67 FR 76183; December 11, 2002	February 3, 2005.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
096079	Douglas J. Schippers	69 FR 70703; December 7, 2004	January 24, 2005.

Dated: February 18, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–4355 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 6, 2005.

ADDRESSES: 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, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Donald Morin, Auburn, GA, PRT–099588

The applicant requests a permit to import the sport-hunted trophy of one male cheetah *(Acinonyx jubatus)* taken in Namibia, for the purpose of the enhancement of the survival of the species.

Applicant: St. Louis Zoo, St. Louis, Missouri, PRT–098483

The applicant requests a permit to import one captive born male Somali wild ass *(Equus africanus somalicus)* from Germany for the purpose of enhancement of the survival of the species.

Applicant: Peter Lang, Safari West, Santa Rosa, CA, PRT–098660

The applicant requests a permit to import one male and one female live captive born cheetah *(Acinonyx jubatus)* from the Cango Wildlife Ranch, South Africa for the purpose of enhancement of the survival of the species.

Applicant: Russell K. Tanaka, Honolulu, HI, PRT–097353

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anthony Battaglia, Moscow, ID, PRT–099297

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus*

pygargus) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Texas Memorial Museum/ University of Texas at Austin, Austin, TX, PRT–005834

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Robert Daggett, PRT–099289

The applicant requests a permit to import a polar bear *(Ursus maritimus)* sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: February 11, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–4357 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan for Western Placer County, CA

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Department of the Army, Corps of Engineers, Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service), are issuing this notice to advise the public that we intend to gather information necessary to prepare, in cooperation with the National Oceanic and Atmospheric Administration's Marine Fisheries Service (NOAA) and U.S. Army Corps of Engineers (Corps), an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the proposed Placer County Conservation Plan (PCCP). The Service is the lead agency for this EIS, and NOAA and the Corps are cooperating agencies.

Placer County Planning Department, the Resource Conservation District, the City of Lincoln, the Placer County Water Agency, and the South Placer Regional Transportation Authority (Applicants) intend to apply to the Service and NOAA for 50-year Endangered Species Act (ESA) permits. The permits are needed to authorize the incidental take of species that could occur as a result of implementation activities proposed to be covered under the PCCP.

The Service, in cooperation with NOAA and the Corps, provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATES: Written comments should be received on or before April 6, 2005. Public meetings will be held on: Tuesday, March 15, 2005, from 6 p.m. to 8 p.m.; Wednesday, March 16, 2005, from 6 p.m. to 8 p.m.; and, Thursday, March 17, 2005, from 7:30 p.m. to 9:30 p.m.

ADDRESSES: The public meetings will be held at the following locations: (1) Tuesday, March 15, 2005, at the City of Roseville Corporation Yard, Rooms 2 and 3, 2005 Hilltop Circle, Roseville, CA 95747; (2) Wednesday, March 16, 2005, at Placer County Planning Commission Chambers, 11414 B Avenue, Auburn, CA 95603; and, (3) Thursday, March 17, 2005, at City of Lincoln McBean Pavilion, 65 McBean Park Drive, Lincoln, CA 95648.

Information, written comments, or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Jesse Wild, Fish and Wildlife Biologist, or Lori Rinek, Chief, Conservation Planning and Recovery Division at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek as soon as possible (*see* **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and Federal regulations prohibit the ''take'' of a fish and wildlife species listed as endangered or threatened. Under the ESA, the following activities are defined as take: Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations

governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Take of listed plant species is not prohibited under the ESA and cannot be authorized under a section 10 permit. We propose to include plant species on the permit in recognition of the conservation benefits provided for them under the PCCP. All species included on the permit would receive assurances under the Service's ''No Surprises'' regulation, if at the time of issuance of the incidental take permit the ''No Surprises'' regulation is in effect (63 FR 8859).

Currently, the Applicants intend to request permits authorizing the incidental take of 29 animal species (8 federally listed and 21 unlisted animal species) for 50 years during the course of conducting otherwise lawful land use or development activities on public and private land in Western Placer County. The permit would also cover 5 currently unlisted plants. Listed species proposed to be covered that are administered by the Service are the federally-endangered vernal pool tadpole shrimp (*Lepidurus packardi*); the federally-threatened bald eagle (wintering) (*Haliaeetus leucocephalus*), California red-legged frog (*Rana aurora draytonii*), California tiger salamander (*Ambystoma californiense*), giant garter snake (*Thamnophis gigas*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and vernal pool fairy shrimp (*Branchinecta lynchi*). The listed species proposed to be covered that is administered by NOAA is the federally-threatened central valley steelhead (*Oncorhynchus mykiss*).

The 25 unlisted species (20 animal and 5 plant species) proposed to be covered under the PCCP that fall within the Service's jurisdiction are the State-threatened Swainson's hawk (*Buteo swainsoni*), California black rail (*Laterallus jamaicensis*), and bank swallow (nesting) (*Riparia riparia*); the State-endangered yellow-billed cuckoo (*Coccyzus americanus occidentalis*) and Bogg's Lake hedge-hyssop (*Gratiola heterosepala*); and the American peregrine falcon (wintering) (*Falco peregrinus anatum*), Cooper's hawk (*Accipiter cooperii*), ferruginous hawk (wintering) (*Buteo regalis*), grasshopper sparrow (*Ammodramus savannarum*), loggerhead shrike (*Lanius ludovicianus*), Modesto song sparrow (*Melospiza melodia mailliardi*), northern harrier (nesting) (*Circus cyaneus*), rough-legged hawk (wintering) (*Buteo lagopus*), sharp-shinned hawk (*Accipiter striatus*), tricolored blackbird (nesting) (*Agelaius tricolor*), western burrowing owl (*Athene cunicularia hypugaea*), yellow warbler (nesting) (*Dendroica petechia*), yellow-breasted chat (nesting) (*Icteria virens*), foothill yellow-legged frog (*Rana boylii*), northwestern pond turtle (*Clemmys marmorata marmorata*), western spadefoot toad (*Scaphiopus hammondii*), Ahart's dwarf rush (*Juncus leiospermus var. ahartii*), dwarf downingia (*Downingia pusilla*), legenere (*Legenere limosa*), and Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*). The currently unlisted species proposed to be covered that falls within NOAA's jurisdiction is the central valley fall/late fall-run chinook salmon (*Oncorhynchus tshawytscha*). Species may be added or deleted during the course of PCCP development based on further analysis, new information, agency consultation, and public comment.

The planning area that the PCCP proposes to cover consists of approximately 270,000 acres in Western Placer County, California. Western Placer County is bordered on the north by Yuba and Nevada Counties, on the west by Sutter County, on the south by Sacramento County, and on the east by the upper boundaries of the watersheds which contain the eastern limits of the City of Auburn. Excluded areas include the cities of Roseville, Rocklin, Loomis, and Auburn. Infill and new growth in these areas are not proposed to be covered by the permits based on the PCCP. The PCCP would be the first of three independently viable conservation plans that together encompass all of Placer County. We anticipate that planning for the two other conservation plans will be initiated beginning in Spring 2005; however, the conservation strategies in this PCCP will not rely on the other two.

Proposed implementation activities that may be covered under the PCCP include direct actions by Applicants and indirect actions by Applicants that would authorize or induce urban development and associated infrastructure, such as County and/or city projects related to road maintenance/construction, water delivery infrastructure, drainage, flood control, sanitary systems, solid waste management, and new capital facility construction. Other proposed covered activities may include fuel load management, resource management plan implementation, habitat restoration activities, and recreational projects (such as parks, trails, boat ramps). Impacts to agriculture may also be included in the EIS/EIR, because the agencies may be asked to cover some aspects of agricultural practices in the proposed permits if the actions are associated with those of the Applicants.

Service and NOAA Actions

Under the PCCP, the effects of proposed covered activities on covered species are expected to be minimized and mitigated through participation in a conservation program, which would be fully described in the PCCP. Covered activities would be carried out in accordance with the PCCP which includes a program designed to ensure the continued conservation of natural communities and threatened and endangered species in Western Placer County, and to resolve potential conflicts between otherwise lawful activities and the conservation of habitats and species on non-Federal land in Western Placer County. Components of this conservation program are now under consideration by the Service, NOAA, and the Applicants. These components will likely include avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration, and enhancement of habitat.

Although other public and private entities or individuals have participated in development of the PCCP and may benefit by the issuance of incidental take permits, Placer County has accepted responsibility for coordinating the preparation of the PCCP, submission of the permit applications, and preparation of an EIS, under the Service's supervision, for Service and Cooperating Agency review and approval. As a Cooperating Agency, NOAA may use the EIS analysis for the purposes of supporting a decision as to whether to issue an incidental take permit to the Applicants based on the proposed PCCP. Development of the PCCP has involved a public input process that has included open meetings of a Biological Stakeholder Working Group and public workshops with the Placer County Board of Supervisors. It is anticipated that the PCCP will be implemented through the incidental take permit and an Implementation Agreement.

Corps Actions Included in PCCP

The Applicants are expected to apply to the Corps for a Clean Water Act (CWA) Section 404 Programmatic General Permit (PGP). As a Cooperating Agency, the Corps may use the EIS analysis for the purposes of supporting the decision whether to issue the proposed PGP. Section 404 of the CWA regulates and requires Corps authorization for certain discharges of dredged or fill material into waters of the United States (33 CFR 323.3). A PGP is among the types of general permits

which can be issued for any category of activities involving discharges of dredged or fill material if the Corps makes certain determinations (33 U.S.C. 1344(e)). Regulations concerning processing of Corps permits are at 33 CFR part 325. Corps regulations promulgated under the CWA define dredged or fill material in detail at 33 CFR 323.2.

Non-Federal Actions Included in PCCP

A Natural Community Conservation Plan (NCCP) is being incorporated into the PCCP in coordination with the California Department of Fish and Game (CDFG) under the State of California's Natural Community Conservation Planning Act (NCCPA). The Applicants are expected to pursue an incidental take authorization from CDFG in accordance with section 2835 of the NCCPA. The California Endangered Species Act (CESA) prohibits the ''take'' of wildlife species listed as endangered or threatened by the California Fish and Game Commission (California Fish and Game Code, section 2080). The CESA defines the term ''take'' as: Hunt, pursue, catch, capture or kill, or attempt to engage in such conduct (California Fish and Game Code, section 86). Pursuant to section 2835 of the NCCPA (California Fish and Game Code section 2835), CDFG may issue a permit that authorizes the take of any CESA listed species or other species whose conservation and management is provided for in a CDFG-approved NCCP.

The Applicants are also expected to apply to CDFG for a Master Streambed Alteration Agreement (California Fish and Game Code, section 1600); and to apply to the Regional Water Quality Control Board for CWA Section 401 water quality certification in compliance with the California Porter-Cologne Water Quality Control Act.

Although the EIS will analyze the environmental impacts associated with all of the activities in the PCCP, the focus of our decision based on this EIS will be effects to proposed covered species and the issuance of the Services' ESA permits. Pursuant to the California Environmental Quality Act (CEQA), a separate Notice of Preparation for the EIR will be posted by the County and issued through the California State Clearinghouse concurrently with this Notice.

Environmental Impact Statement/ Report

Jones and Stokes Associates has been selected to prepare the EIS/EIR. The joint document will be prepared in compliance with NEPA and CEQA. Although Jones and Stokes Associates will prepare the EIS/EIR, the Service, as the NEPA Lead Agency, will be responsible for the purpose, need, scope and content of the document for NEPA purposes, and the Corps and NOAA will be Cooperating Agencies for NEPA. The County, as the CEQA Lead Agency, will be responsible for the scope and content of the document for CEQA purposes. Responsible Agencies for CEQA purposes include CDFG, the permitting entity pursuant to California Fish and Game Codes 1600 and 2835, and Regional Water Quality Control Board, the permitting entity pursuant to Section 401 of the CWA.

The EIS/EIR will consider the proposed action, the issuance of an ESA incidental take permit, no action (no permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. The alternatives to be considered for analysis in the EIS/EIR may include: Variations of the geographical coverage of the permits, variations in the amount and type of conservation; variations of the scope or type of covered activities or covered species; variations in permit duration; variations on the types of Federal and State permits issued under the program; no project/no action; or, a combination of these elements.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

The following primary issues are to be addressed during the scoping and planning process for the PCCP and EIS/EIR: (1) The determination of potential effects of each alternative on species and natural communities covered under the proposed HCP/NCCP; (2) consideration of whether the level and extent of urban development defined under each alternative can be adequately mitigated within the lands in the conservation opportunity area; (3) consideration of whether an adequate system of reserves can be established in the conservation area and whether such a reserve system will support habitat of covered species equal to or greater than the habitat lost from urban development; (4) determination of whether the direct and indirect impacts of covered urban development and other activities will be adequately mitigated (issues to be addressed will include land use, traffic, air quality, cultural resources, water resources, and biological resources); and (5) consideration of cumulative impacts.

Environmental review of the PCCP will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR 1500–1508), other applicable regulations, and Service and NOAA procedures for compliance with those regulations. We are publishing this notice in accordance with section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action of issuing the ESA permit for the PCCP. Written comments from interested parties are invited to ensure that the full range of issues related to the permit request is identified. Comments will only be accepted in written form. You may submit written comments by mail, facsimile transmission, or in person (*see* **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: March 1, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–4316 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally-Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as authorized by the Secretary of Transportation, the Bureau of Indian Affairs intends to make funds available to federally-recognized Indian tribes on an annual basis for implementing traffic safety projects, which are designed to reduce the number of traffic crashes, deaths, injuries and property damage within Indian country. Because of the limited funding available for this

project, all projects will be reviewed and selected on a competitive basis. This notice informs Indian tribes that grant funds are available and that the information packets are forthcoming. Information packets will be distributed to all tribal leaders on the latest tribal leaders list that is complied by the Bureau of Indian Affairs.

DATES: Requests for funds must be received by May 1 of each program year. Requests not received in the office of the Indian Highway Safety Program by close of business on May 1 will not be considered. The information packets will be distributed by the end of January of each program year.

ADDRESSES: Each tribe must submit their request to the Bureau of Indian Affairs, Division of Safety and Risk Management, Attention: Indian Highway Safety Program Coordinator, 201 3rd Street, NW., Suite 310, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Tribes should direct questions on the grant program to Patricia Abeyta, Coordinator, Indian Highway Safety Program or to Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, 201 3rd Street, NW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 245–2104.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation (DOT) funding to assist Indian tribes in implementing Highway Safety projects. The projects must be designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance. All tribes receiving awards of program funds are reimbursed for eligible costs incurred under the terms of 23 U.S.C. 402 and subsequent amendments.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a ''State'' and the Secretary of the Interior is considered the ''Governor of a State.'' The Secretary of the Interior delegated the authority to administer the programs for all the Indian Nations in the United States to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs further delegated the responsibility for administration of the Indian Highway Safety Program to the Central Office, Division of Safety and Risk Management (DSRM), located in Albuquerque, New Mexico. The Chief, DSRM, as Program Administrator of the Indian Highway Safety Program, has staff members available to provide program and technical assistance to the Indian tribes. The Indian Highway Safety Program maintains contacts with the DOT with respect to program approval, funding and receiving technical assistance. DOT, through the National Highway Traffic Safety Administration (NHTSA), is responsible for ensuring that the Indian Highway Safety Program is carried out in accordance with 23 CFR part 1200 and other applicable Federal statutes and regulations.

National Priority Program Areas

The following highway safety program areas have been identified as eligible for funding under 23 CFR part 1205 based on an identifiable traffic safety problem on tribal lands:

- Alcohol Countermeasures.
- Police Traffic Services.
- Occupant Protection.
- Traffic Records.
- Emergency Medical Services.
- Safe Communities.
- Motorcycle Safety.
- Pedestrian and Bicycle Safety.
- Speed Control.

Highway Safety Program Funding Areas

Proposals are being solicited for the following program areas:

(1) *Police Traffic Services.* Selective traffic enforcement projects (STEPs) to enforce posted speed limits, apprehend reckless drivers and other traffic law violations, and specialized training for traffic law enforcement officers and judicial system officials.

(2) *Alcohol Countermeasures.* STEPs to apprehend impaired drivers, specialized law enforcement training (such as Standardized Field Sobriety Testing), public information programs on alcohol/other drug use and driving, education programs for convicted DWI/DUI offenders and various youth alcohol education programs promoting traffic safety. Proposals for projects that enhance the development and implementation of innovative programs to combat impaired driving are also solicited.

(3) *Emergency Medical Services.* Traffic safety related training primarily for rural emergency medical service providers, public education, and injury prevention.

(4) *Occupant Protection.* Surveys to determine usage rates and to identify high-risk non-users, comprehensive programs to promote correct usage of child safety seats and other occupant restraints, STEPs, specialized training (such as Operation Kids, Traffic Occupant Protection Strategies (TOPS), and Standardized Child Passenger Safety Technician), and evaluations.

(5) *Traffic Records.* Conduct assessments, analyze vehicular crash occurrences and causal factors and support joint efforts with other agencies to improve the tribe's traffic records system.

(6) *Motorcycle Safety.* Public education and motorcycle operator training.

(7) *Safe Communities.* Problem identification, data collection, plan development, and program implementation.

(8) *School Bus Safety.* School bus transportation administrator support, school bus driver education and training.

(9) *Pedestrian/Bicycle Safety.* Traffic law enforcement, public education and community programs.

Project Guidelines

BIA will send information packets to the Tribal Leader of each federally-recognized Indian tribe by the end of January of each program year. On receiving the information packet, each tribe, to be eligible, must prepare a proposed project based on the following guidelines:

(1) *Program Planning.* Program planning must be based upon the highway safety problems identified and the goals/objectives measures selected by the tribe.

(2) *Problem Identification.* Highway traffic safety problems must be based on tribal data. County data or other data not specific to the tribe will not be accepted. This data should be sufficient enough to show problems and/or trend analysis. This data should be available in tribal enforcement and traffic crash records. The problem identification process may be aided by using professional studies, testing, and Indian Health Service. Data must accompany the funding request.

(3) *Countermeasures Selection.* Once tribal traffic safety problems are identified, appropriate countermeasures to solve or reduce the problem(s) must be identified. The tribe should consider the overall cost of the countermeasures versus their possible effect on the problem.

(4) *Objectives/Performance Indicator.* A list of objectives and measurable highway safety goals, within the National Priority Program Areas, based on highway safety problems identified by the tribe, must be included in each proposal, expressed in clearly defined, time-framed, and measurable terms. Each goal must be accompanied by at

least one performance indicator that enables the Indian Highway Safety Program to track progress, from a specific baseline, towards meeting the goal (*e.g.*, a goal to ''increase safety belt use from XX percent in 2003 to YY percent in 2004,'' using a performance measure of ''percent of restrained occupants in front outboard seating positions in passenger motor vehicles''). Performance measures should be aggressive but attainable.

(5) *Budget Forma.* The activities to be funded will be outlined in detail according to the following object groups: Personnel services; travel; and transportation; rent/communications; printing and reproduction, other services, equipment and training. Equipment purchases $5,000 or more require prior approval from NHTSA. Each object group must be quantified; *i.e.*, personnel activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object group must have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made, and the total cost, including any tribal contribution to the project. Because of limited funding, this office will limit indirect costs to a maximum of 15 percent.

(6) *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted, and if it has accomplished its objectives. The tribe must include in the funding request a plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance.

(7) *Technical Assistance.* The Indian Highway Safety Program staff will be available to tribes for technical assistance in developing of tribal projects.

(8) *Project Length.* The traffic safety program is designed primarily as the source of invention and motivation, rather than as financially supporting continuing operations.

(9) *Certification Regarding Drug-Free Workplace Requirement.* Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. An individual authorized to sign for the tribe or reservation must sign the certification. The Department of Transportation must receive the certification before it will release grant funds for that tribe or reservation. The certification must be submitted with the tribal Highway Safety Project proposal.

Submission Deadline

Each tribe must send its funding request to the BIA Indian Highway Safety Program office in Albuquerque, New Mexico. The Indian Highway Safety Program office must receive the request by close of business *May 1 of each program year*. Requests for extensions to this deadline will not be granted. Modifications of the funding request received after the close of the funding period will not be considered in the review and selection process.

Selection Criteria

Each funding request will be reviewed and evaluated by the BIA's Indian Highway Safety Program, Law Enforcement, Department of Education, Office of Alcohol and Substance Abuse, and Division of Transportation staff. Each staff member, by assigning points to the following five criteria, will rank each of the proposals based on the following criteria:

Criteria 1, the strength of the problem identification based on verifiable, current and applicable documentation of the traffic safety problem (40 points maximum).

Criteria 2, the quality of the proposed solution plan based on aggressive but attainable performance measures, time-framed action plan, cost eligibility, amount, if any, of in-kind funding/support provided by the tribe, and necessity and reasonableness of the budget (30 points maximum).

Criteria 3, details on how the tribe will evaluate and show progress on its performance measures regarding the Evaluation component (20 points maximum).

Criteria 4, supporting documentation of the submitting tribe's qualifications, commitment, and community involvement in traffic safety (10 points maximum).

Criteria 5, tribes are eligible for bonus points (up to 10 extra points) if all reporting requirements have been met in previous years.

Notification of Selection

The tribes selected to participate will be notified by letter. Upon notification, each tribe selected must provide a duly authorized tribal resolution. The certification and resolution must be on file before grant funds for the tribe can be released.

Notification of Non-Selection

The Program Administrator will notify each tribe of non-selection. The tribe will be provided the reason for non-selection. Non-selected proposals may be retained, with score sheets, for 90 days.

Uniform Administrative Requirements for Grant-in-Aid

Uniform grant administration procedures have been established on a national basis for all grant-in-aid programs by DOT/NHTSA under 49 CFR part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' NHTSA and FHWA have codified uniform procedures for State Highway Safety Programs in 23 CFR parts 1200, 1205 and 1251. OMB Circular A–87 and the ''Highway Safety Grant Funding Policy for NHTSA/FHWA Field-Administered Grants'' are the established cost principles applicable to grants and contracts through BIA and with tribal governments. It is the responsibility of BIA's Indian Highway Safety Program office to establish operating procedures consistent with the applicable provisions of these rules.

Standards for Financial Management System

Tribal financial systems must provide:

(1) Current and complete disclosure of project activities.

(2) Accurate and timely recordkeeping.

(3) Accountability and control of all grant funds and equipment.

(4) Comparison of actual expenditures with budgeted amounts.

(5) Documentation of accounting records.

(6) Appropriate auditing of Highway Safety Projects, which will be included in the Tribal A–133 single audit requirement.

Tribes will provide monthly program status reports and a corresponding reimbursement claim to the Coordinator, BIA Indian Highway Safety Program, 201 3rd Street, NW., Suite 310, Albuquerque, New Mexico 87102. These will be submitted no later than 10 work days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA Indian Highway Safety Program office to review the implementation of tribal traffic safety plans and programs, monitor the progress of their activities and expenditures, and provide technical assistance as needed.

Project Evaluation

BIA will conduct an annual performance evaluation for each Highway Safety Project. The evaluation will measure the actual accomplishments to the planned activity. BIA will evaluate the project

on-site at the discretion of the Indian Highway Safety Program Administrator.

Dated: February 11, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 05–4367 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–5H–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compact taking effect.

SUMMARY: Notice is given that the Tribal-State Gaming Compact between the Seneca-Cayuga Tribe and the State of Oklahoma is considered approved and is in effect.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 (d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that was 45 days after the date it was submitted. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this compact is considered approved but only to the extent it is consistent with IGRA. This compact authorizes the Seneca-Cayuga Tribe to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games, and takes effect on the date the approval is published in the **Federal Register**.

Dated: February 11, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4366 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Amendment taking effect.

SUMMARY: Notice is given that the Amendment to the Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New York is considered to have been approved and is in effect.

EFFECTIVE DATE: March 7, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 (d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this Amendment before the date that is 45 days after the date it was submitted. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this Amendment is considered to have been approved, but only to the extent it is consistent with IGRA. This Amendment authorizes the tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, prohibits the Tribe from conducting video lottery terminals, and prohibits non-tribal operation of slot machines. It takes effect on the date the approval is published in the **Federal Register**.

Dated: February 10, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4365 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The title of this information collection request (ICR) is ''30 CFR 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS–4070, Application for the Purchase of Royalty Oil; MMS–4071, Letter of Credit; and MMS–4072, Royalty-in-Kind Contract Surety Bond).'' We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208 and the Royalty-in-Kind (RIK) 5-Year Business Plan, and to reflect OMB consolidation approval of five RIK-related ICRs. Those ICRs were titled:

- *1010–0042:* 30 CFR part 208—Sale of Federal Royalty Oil; Royalty-in-Kind (RIK) Program (Form MMS–4070, Application for the Purchase of Royalty Oil);
- *1010–0119:* 30 CFR part 208—Sale of Federal Royalty Oil, Royalty Oil Sales to Eligible Refiners (30 CFR 208.4(a) and (d));
- *1010–0126:* Royalty-in-Kind (RIK) Pilot Program Directed Communications by Operators of Federal Oil and Gas Leases;
- *1010–0129:* Royalty-in-Kind Pilot Program—Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas; and
- *1010–0135:* 30 CFR 208.11(a), (b), (d), and (e)—Surety Requirements (Forms MMS–4071 and MMS–4072).

In the five ICRs, much of the general information was repeated and cross referenced. This consolidated ICR 1010–0119 eliminates that duplication of effort and redundancy of data. It also provides for all RIK information-collection requirements to be reviewed on a MMS RIK operational program-wide basis.

DATES: Submit written comments on or before May 6, 2005.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory

Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS–4070, Application for the Purchase of Royalty Oil; MMS–4071, Letter of Credit; and MMS–4072, Royalty-in-Kind Contract Surety Bond).

OMB Control Number: 1010–0119.

Bureau Form Number: Forms MMS–4070, MMS–4071, and MMS–4072.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The MMS performs the royalty management functions for the Secretary.

The MMS is responsible for ensuring that all revenues from Federal and Indian mineral leases are accurately collected, accounted for, and disbursed to recipients. Historically, most of these revenues have been received in the form of cash royalty payments, *i.e.*, royalty in value payments. These payments are paid by mineral development interests. In recent years, MMS had conducted pilots to test the approach of taking royalties in kind.

The Federal Government's MMS RIK pilot program has become a permanent operational program after several years of pilot project testing. The MMS RIK operational program takes payment from mineral lessees ''in kind'' in the form of produced crude oil and natural gas volumes, rather than in cash payments. The lessee transfers the title of the oil or gas to the Federal Government, and MMS sells the received product (oil or gas) to agents in the marketplace and disburses revenues as prescribed by law. The MMS sells some product competitively in the unrestricted marketplace, and other RIK product is sold competitively to eligible refiners (a small and independent refiner, as defined in 30 CFR 208.2). Additionally, when directed, MMS delivers the RIK product to other Federal Agencies, as has been the case during the fill of the Strategic Petroleum Reserve (SPR), directed by the President in 2001, with scheduled completion in 2005. Specifically, within the MMS RIK operational program, RIK conducts the eligible refiner program and the SPR program, in addition to the Wyoming crude oil, offshore unrestricted crude oil, and offshore natural gas programs.

The MMS has consolidated and revised existing procedures and policies guiding the sale of onshore and offshore royalty crude oil and natural gas to establish uniformity within the regulatory and operational framework, to provide industry with a more efficient and responsive MMS RIK operational program, and to improve the Federal Government's administration of this program. For example, several of the reporting requirements for eligible refiners under 30 CFR part 208 have been combined with reporting requirements for other RIK purchasers. However, due to the unique nature of the sale of crude oil to eligible refiners, certain requirements pertain only to that eligible refiner program.

Applicable citations of the laws pertaining to the taking and selling of the Federal Government's royalty share of mineral leases in the form of production (royalties ''in kind'') include 30 CFR part 208; Mineral Leasing Act of 1920, section 36, as amended (30 U.S.C. 192); Outer Continental Shelf Lands Act of 1953, section 27, as amended (43 U.S.C. 1353); 30 U.S.C. 189 pertaining to Public Lands; 30 U.S.C. 359 pertaining to Acquired Lands; and 43 U.S.C. 1334 pertaining to OCS Lands. These citations, as well as specific language in the actual lease documents, authorize the Secretary to sell royalty oil and gas accruing to the United States. The standard lease terms state that royalties are due in amount or in value. In addition, these citations authorize the Secretary to prescribe proper rules and regulations and to do any and all things necessary to accomplish the purpose of applicable laws. The MMS directs communications between MMS operators and RIK purchasers through commercial contracts, situation-specific ''Dear Operator'' letters, or in the case of eligible refiners, through regulations at 30 CFR part 208. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

Eligible Refiner Information—This information was previously collected under ICRs 1010–0042 and 1010–0119.

When the Secretary determines that eligible refiners do not have access to adequate supplies of oil, the Secretary may dispose of any royalty oil taken by conducting a sale of such oil, through an allocation process to eligible refiners. For the eligible refiners to participate in the eligible refiner RIK program, according to 30 CFR 208.4(a) and (b), MMS periodically completes a needs assessment to determine if eligible refiners continue to require access to domestic crude oil at competitive prices. The most recent assessment was completed in early 2004. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners.

Under 30 CFR 208.4(c), the MMS, on behalf of the Secretary, performs a Determination of Need prior to issuing a notice of availability of sale in the **Federal Register**, advising industry of a forthcoming RIK crude oil sale for eligible refiners. The MMS uses the feedback from the Determination of Need respondents (eligible refiners or other interested parties, such as lessees or operators) to assess current marketplace conditions, *i.e.*, whether small and independent eligible refiners have access to ongoing supplies of crude oil at equitable prices. If MMS determines that eligible refiners do not have adequate access to crude oil supplies, MMS then takes the Federal Government's royalty oil in kind and offers the oil for sale to eligible refiners.

The eligible refiners interested in purchasing royalty oil must submit Form MMS–4070, Application for the Purchase of Royalty Oil, in accordance with instructions in the Determination of Need notice and instructions issued by MMS for completion of the form. The Federal Government's administration of the eligible refiner program is aided significantly by the collection of information requested on Form MMS–4070. The MMS uses the information collected on Form MMS–4070 to determine the eligibility of refiners wanting to enter into contracts to purchase royalty oil and to provide a basis for the allocation of available royalty oil among eligible refiners, when necessary; that is, they meet the small refiner eligibility requirements issued by the Small Business Administration, as explained under 30 CFR 208.6. Under 30 CFR 208.10(e), eligible refiners who

purchase royalty oil cannot transfer, assign, or sell their rights or interest in a royalty oil contract without written approval of the Director, MMS. This provision is intended to ensure that only qualified eligible refiners benefit from these sales of royalty oil.

Directed Communications by Operators of Federal Oil and Gas Leases—This information was previously collected under ICR 1010–0126.

Collection of RIK oil and gas for eligible refiners and other RIK purchasers requires communication between MMS and the operators of a lease to ensure accurate and timely delivery of MMS's royalty share of production volumes. In order to take MMS's crude oil or natural gas in kind, MMS, as the responsible steward of oil and gas royalties, must direct operators of affected MMS leases to provide three types of communication:

- Report information about the projected volumes and qualities of RIK crude oil or natural gas production the operator expects to make available for delivery in the following month, and report corrections to those projected volumes and qualities for previous months, submitting monthly no later than 10 days before the first day of following month;
- Report cost/invoicing information about transportation charges incurred for delivering the RIK product to the delivery point, when applicable; and
- Report month-end summary information (lease imbalance statement) regarding total RIK crude oil or natural gas volumes and qualities needed to carry over to the next month to resolve aggregated imbalances that have occurred in prior months of RIK deliveries.

These information requirements are standard business practices in the oil and gas industry.

In marketing the product, information received through MMS's directed communication is essential for MMS to ensure the delivery and acceptance of verifiable quantities and qualities of oil and gas. In cases when MMS is directed to deliver the product to other Federal Agencies, these types of information are necessary so that exchange contractors can arrange to timely accept accurate amounts and qualities of royalty oil that will be delivered by MMS's exchange partner and for MMS to verify timely fulfillment of operators' and lessees' royalty obligations to the Federal Government.

Third-Party Agreements—This information was previously collected under ICR 1010–0042.

Title 30 CFR 208.9 requires that eligible refiners who purchase royalty oil must submit to MMS two copies of any written third-party agreements, or two copies of a complete written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. Also, this section requires that the purchaser must submit copies of agreements pertaining to quality differentials that may occur between the lease(s) and the delivery point(s). However, in practice MMS does not currently require the eligible refiners to submit these agreements.

Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas—This information was previously collected under ICRs 1010–0129 and 1010–0135.

The Secretary is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale, and to obtain a fair return on royalty production sold. The MMS must fulfill those obligations for the Secretary. The reporting requirements are (1) actual offers that potential purchasers will submit when MMS offers production for competitive sale; (2) offerors' statements of financial qualification; and (3) surety instruments, such as a Letter of Credit (LOC), bond, prepayment, or parent guaranty when financial qualification is not sufficient.

The MMS will evaluate offers, which competing potential purchasers may choose to submit, in response to a variety of types of offerings in the MMS RIK operational program. The format for offers will be specified in the offering and may vary among offerings. The MMS may offer royalty oil and gas production by Invitation for Offers (IFOs). The IFO will be open only to offerors who have previously established their qualifications. The MMS will evaluate all offers to determine which combination of price and other terms comprises the best return to the Federal Treasury and to any affected State.

The MMS may request that a bidder submit its public-available statement of its financial condition (brought briefly up to date, if needed) or other related qualification information. The MMS evaluates the qualification information to determine whether bidders are reliable to follow through on payment of the dollar amount (or delivery of exchange production) offered as they bid, and to determine their ability to timely perform activities attendant to the taking of oil and/or gas. The MMS performs this step to reduce the risk to the Federal Government in these transactions.

Under MMS's current practice, eligible refiners are subject to the same requirements as other RIK purchasers regarding MMS-acceptable surety instruments and qualification information. Reporting requirements in 30 CFR 208.11 discuss surety instruments for eligible refiners. Surety instruments include the broad field of financial instruments that may be collected, such as bonds, prepayments, and parent guaranties. When required, eligible refiners and other RIK purchasers must provide surety documents to protect the Federal Government's interest, such as but not limited to, Form MMS–4071, Letter of Credit; Form MMS–4072, Royalty-In-Kind Contract Surety Bond; or other acceptable commercial surety, within 5 business days prior to the first delivery under the contract. For bonds, MMS requires a specific MMS-approved format.

Frequency of Response: On occasion, weekly, monthly, annually, frequency varies within monthly reporting cycle, or as necessary.

Estimated Number and Description of Respondents: 145 Federal lessees and/or operators; and 80 commercial oil and gas purchasers and/or refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 5,099 hours.

We are revising this ICR to include reporting requirements that were overlooked in the previous renewal, and we have adjusted the burden hours accordingly. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph.

SECTION A.12. BURDEN BREAKDOWN

Citation 30 CFR part 208	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions				
208.4 Royalty Oil Sales to Eligible Refiners				
208.4(a)	(a) Determination to take royalty oil in kind. The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. * * *	4	8	32
208.4(b)	(b) Sale to eligible refiners (1) * * * The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries. * * *	Hour burden covered under § 208.4(a).		
208.4(c)	(c) Upon a determination by the Secretary * * * that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. * * *	Hour burden covered under § 208.4(a).		
208.4(d)	(d) Interim sales. * * * The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. * * *	Hour burden covered under § 208.4(a).		
208.6 General Application Procedures				
208.6(a) and (b)	(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with instructions provided in the ''Notice of Availability of Royalty Oil'' and in accordance with any instructions issued by MMS for completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS–4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS–4070 at the time of application: * * *	1.25	8	10
208.7 Determination of Eligibility				
208.7(a)	(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. * * *	0.25	1	[1] 1
208.8 Transportation and Delivery				
208.8(a)	(a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.	1	1	1
208.8(b)	(b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206. * * *	Hour burden covered by OMB Control Number 1010–0140 (Form MMS–2014, expires 10/31/2006). This provision is no different than the transportation allowances allowed in 30 CFR 206 for royalties paid in value. The lessee enters allowance amount on Form MMS–2014.		
208.9 Agreements				
208.9(a)	(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third- party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.	1	8	8

SECTION A.12. BURDEN BREAKDOWN—Continued

Citation 30 CFR part 208	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	208.10 Notices			
208.10(d)	(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. * * *	2	20	40
208.10(e)	(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. * * *	1	1	1
	208.11 Surety Requirements [for eligible refiners]			
208.11 (a), (b) (d), and (e)	(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. * * * (b) * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * * (d) The "MMS-specified surety instrument" shall be in the form specified by MMS instructions or approved by MMS. * * * (e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	4	4	16
	208.15 Audits			
208.15	Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at other such times as may be directed by MMS. * * *	Produce Records: The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
	Directed Communications by Operators of Federal Oil and Gas Leases			
Contract-Directed	Wyoming Oil	1	100	100
	Natural Gas [Texas 8G and Gulf of Mexico (GOM)]	1	3,600	3,600
	GOM Oil	1	50	50
	SPR Fill Initiative (The SPR is expected to reach full capacity by the end of FY 2005. At that point, MMS will shift SPR oil volumes to the commercial GOM Oil RIK program. Thus, information-collection responses will continue at the same level after SPR is filled to capacity.)	1	300	300
	Eligible Refiners	Hour burden covered under § 208.10(d).		
	Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas			
Contract-Directed	Offers	1	840	840
	Financial Statements	1	20	20
	Surety Instruments	4	20	80
Total Burden			4,981	5,099

[1] Rounded up from 0.25.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of

automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: February 23, 2005.

Richard Adamski,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 05–4333 Filed 3–4–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 2, 2004, Norac, Inc., 405 S. Motor Avenue, PO Box 577, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substances in bulk for formulation into the pharmaceutical controlled substance marinol.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: Federal Register Representative, Liaison and Policy Section (ODL) or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 6, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4290 Filed 3–4–05; 8:45 am]

BILLING CODE 4410–09–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 10, 2005, and Friday, March 11, 2005, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on March 10, and at 9 a.m. on March 11.

Topics for discussion include findings on congressionally mandated studies on critical access hospitals and risk adjustment and other issues related to the adjusted average per capita cost (AAPCC). The Commission will also discuss Medicare Advantage plans, implementation issues with the new Medicare Part D benefit, outpatient pharmacy services in hospitals, and reform issues for various post-acute care settings. The Commission will also host a panel on the use of clinical- and cost-effectiveness information by Medicare.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 2001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 05–4380 Filed 3–4–05; 8:45 am]

BILLING CODE 6820–BW–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–03]

Revised Notice of March 14, 2005 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m.–12 p.m., Monday, March 14, 2005.

PLACE: Department of State, C Street Entrance, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be

obtained from Joyce B. Lanham at *Board@mcc.gov* or (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a quarterly meeting of the Board to discuss and consider a proposed Millennium Challenge Account (''MCA'') Compact under the provisions of Section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7706(a); other information relating to Compact development efforts with other MCA-eligible countries; the MCC Threshold Program; and certain administrative matters. The meeting will be closed to the public because it is expected to involve the consideration of classified information and information relating to the internal personnel practices of MCC.

Dated: March 3, 2005.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–4439 Filed 3–3–05; 11:28 am]

BILLING CODE 9210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–035]

NASA Advisory Council, Aeronautics Research Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aeronautics Research Advisory Committee (ARAC).

DATES: Wednesday, March 23, 2005, 8:30 a.m. to 5:15 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary-Ellen McGrath, Office of Aeronautics Research, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening remarks.
—NASA Aero FY06 budget update.
—Integrated Product Team (IPT).
—Joint Planning and Development Office update.
—Corporate management of facilities.
—Closing comments.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mary-Ellen McGrath via e-mail at *mary.E.mcgrath@nasa.gov* or by telephone at (202) 358–4729. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations.

[FR Doc. 05–4330 Filed 3–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice 05–034]

NASA Solar System Exploration Strategic Roadmap Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Solar System Exploration Strategic Roadmap Committee.

DATES: Monday, March 21, 2005, 8 a.m. to 5 p.m., Tuesday, March 22, 2005, 8 a.m. to 5 p.m., Mountain Standard Time.

ADDRESSES: Hilton Tucson El Conquistador, 10000 North Oracle Road, Tucson, AZ 85737.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Pilcher 202–358–0291.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

—Review Pathways and define by goals and decision points.
—Develop draft Roadmap text from Pathways.
—Determine the relationships of the Solar System Roadmap to Moon and Mars Roadmaps.
—Generate a preliminary set of affordability indicators that will allow refinement during integration.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 05–4329 Filed 3–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.as follows:

Save America's Treasures: April 5, 2005, from Room 620. This meeting, from 2 p.m. to 3 p.m., will be closed.

Music (NEA Jazz Masters Fellowship Awards): April 19, 2005, from Room 703. This meeting, from 2 p.m. to 3 p.m., will be closed.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: March 2, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–4331 Filed 3–4–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

NSF–NASA Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following NSF–NASA Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: March 9, 2005, 2:30 a.m.–4:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd. RM 1020, Arlington, VA 22230, via teleconference.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

Agenda: To review and discuss a draft of the committee's March 2005 report.

Reason For Late Notice: While working independently on the report, committee members realized additional discussion was required. To meet the report deadline of March 15, a meeting with little advance notice is required.

Dated: March 2, 2005.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 05–4352 Filed 3–4–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: National Science Board Public Service Award Committee, #5195.

Date and Time: Thursday, March 24, 10:30 a.m.–11:30 a.m. e.s.t. (teleconference meeting).

Place: National Science Foundation, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature when disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: March 2, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–4351 Filed 3–4–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR Part 50, Appendix J for Facility Operating Licenses Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee, also doing business as Progress Energy Carolinas, Inc.) for operation of the Brunswick Steam Electric Plant, Unit Nos. 1 and 2 located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from requirements to include main steam isolation valve (MSIV) leakage in the overall integrated leakage rate test measurement required by Section III.A of Appendix J, Option B.

The proposed action is in accordance with the licensee's application dated October 6, 2004, for exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix J.

The Need for the Proposed Action

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leaktight integrity of the primary reactor containment and systems and components that penetrate the containment. Option B, Section III.A requires that the overall integrated leak rate must not exceed the allowable leakage (La) with margin, as specified in the Technical Specifications (TS). The overall integrated leak rate, as specified in the 10 CFR Part 50, Appendix J definitions, includes the contribution from MSIV leakage. By letter dated October 6, 2004, the licensee has requested an exemption from Option B, Section III.A requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement.

The above-cited requirement of Appendix J requires that MSIV leakage measurements be grouped with the leakage measurements of other containment penetrations when containment leakage tests are performed. These requirements are inconsistent with the design of the Brunswick facilities and the analytical models used to calculate the radiological consequences of design-basis accidents. At Brunswick and similar facilities, the leakage from primary containment penetrations under accident conditions is collected and treated by the secondary containment system or would bypass the secondary containment. However, the leakage from MSIVs is collected and treated via an Alternative Leakage Treatment (ALT) path having different mitigation characteristics. In performing accident analyses, it is appropriate to group various leakage effluents according to the treatment they receive before being released to the environment, i.e., bypass leakage is grouped, leakage into secondary containment is grouped, and ALT leakage is grouped, with specific limits for each group defined in the TS. The proposed exemption would permit ALT path leakage to be independently grouped with its unique leakage limits.

Environmental Impacts of the Proposed Action

The proposed action will not significantly increase the probability or consequences of accidents. The NRC staff has completed its evaluation of the

proposed action and finds that the proposed exemption involves no increase in the total amount of radioactive effluent that may be released off site in the event of a design-basis accident. Therefore, the calculated doses remain within the acceptance criteria of 10 CFR Part 100 and Standard Review Plan Section 15, and there is no significant increase in occupational or public radiation exposure. The NRC staff thus concludes that granting the proposed exemption would result in no significant radiological environmental impact.

The proposed action does not affect non-radiological plant effluents or historical sites and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no action'' alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated January 1974 for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2005, the NRC staff consulted with the North Carolina State official, Ms. Wendy Tingle of the North Carolina Department of Environmental and Natural Resources, Division of Radiation Protection, regarding the environmental impact of the proposed action. Ms. Tingle had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 6, 2004. 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 28th day of February, 2005.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4312 Filed 3–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Material Control and Accounting at Reactors and Wet Spent Fuel Storage Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2005–01 to all holders of operating licenses for nuclear power reactors, decommissioning nuclear power reactor sites storing spent fuel in a pool, and wet spent fuel storage sites. This bulletin contains sensitive information relating to material control and accounting (MC&A) programs and is, therefore, being withheld from public disclosure in accordance with 10 CFR 2.390. The bulletin is being provided to only those licensees needing to respond to it.

DATES: The bulletin was issued on February 11, 2005.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Martha Williams, at 301–415–7878, Glenn Tuttle, at 301–415–7644, or Dori Votolato, at 301–415–7633.

Dated at Rockville, Maryland, this 28th day of February 2005.

For the Nuclear Regulatory Commission.

Patrick L Hiland,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4313 Filed 3–4–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Representative Payee Parental Custody Monitoring.

(2) *Form(s) submitted:* G–99d.

(3) *OMB Number:* 3220–0176.

(4) *Expiration date of current OMB clearance:* May 31, 2005.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,230.

(8) *Total annual responses:* 1,2300.

(9) *Total annual reporting hours:* 103.

(10) *Collection description:* Under section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify the parent-for-child payee still retains custody of the child.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–4305 Filed 3–4–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 7, 2005:

A closed meeting will be held on Wednesday, March 9, 2005, at 4 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(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 closed meeting scheduled for Wednesday, March 9, 2005, will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 2, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–4393 Filed 3–2–05; 4:21 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of CMKM Diamonds, Inc., a/k/a Casavant Mining Kimberlite International, Inc.; Order of Suspension of Trading

March 3, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CMKM Diamonds, Inc. (''CMKM Diamonds'') (Pink Sheets symbol ''CMKX''), a Nevada corporation also known as Casavant Mining Kimberlite International, Inc. Questions have been raised about the adequacy of publicly available information concerning, among other things, CMKM Diamonds' assets and liabilities, mining and other business activities, share structure and stock issuances, and corporate management. Since the fiscal year ending December 31, 2002, CMKM Diamonds has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934. The Commission is concerned that CMKM Diamonds may have unjustifiably relied on a Form S–8 to issue unrestricted securities. The Commission is also concerned that CMKM Diamonds and/or certain of its shareholders may have unjustifiably relied on Rule 144(k) of the Securities Act of 1933 (''Securities Act'') in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Rules 144 and 145 of the Securities Act.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. E.S.T., March 3, 2005, through 11:59 p.m. E.S.T., on March 16, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–4446 Filed 3–3–05; 11:54 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51278; File No. SR–NASD–2005–027]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Members' Obligations To Report Cancelled Trades

February 28, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change Regarding Reporting of Cancelled Trades

Nasdaq proposes to clarify members' obligations to report the cancellation of trades previously submitted to the Nasdaq Market Center. Pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder, Nasdaq has designated this proposal as effecting a change that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. Nasdaq is proposing to make the change operative 60 days after the date of filing. Nasdaq has provided the Commission the pre-filing notification as required by subparagraph (iii) of Rule 19b–4(f)(6).

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.[5]

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

* * * * *

(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(6).

[5] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *http://www.nasd.com.*

Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following *business* day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which a decision to cancel is made] prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(F) For any trade *cancelled* [for which the decision to cancel occurs] on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) [if the decision to cancel occurs before 6:30 p.m., then] by 6:30 p.m. on the date *of cancellation if the trade is cancelled before 6:30 p.m.* [when the decision to cancel occurs], or (ii) [if the decision to cancel occurs at or after 6:30 p.m., then] by 6:30 p.m. on the following *business* day *if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term ''cancelled'' shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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4640. Reporting Transactions in Nasdaq SmallCap℠ Market Securities

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4642. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following *business* day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which a decision to cancel is made] prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(F) For any trade *cancelled* [for which the decision to cancel occurs] on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) [if the decision to cancel occurs before 6:30 p.m., then] by 6:30 p.m. on the date *of cancellation if the trade is cancelled before 6:30 p.m.* [when the decision to cancel occurs], or (ii) [if the decision to cancel occurs at or after 6:30 p.m., then] by 6:30 p.m. on the following *business* day *if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term ''cancelled'' shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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4650. Reporting Transactions in Nasdaq Convertible Debt Securities

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4652. Transaction Reporting

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(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 5430(b) for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 5430(b) to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following *business* day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which a decision to cancel is made] prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 6:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(F) For any trade *cancelled* [for which the decision to cancel occurs] on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) [if the decision to cancel occurs before 6:30 p.m., then] by 6:30 p.m. on the date *of cancellation if the trade is cancelled before 6:30 p.m.* [when the decision to cancel occurs], or (ii) [if the decision to cancel occurs at or after 6:30 p.m., then] by 6:30 p.m. on the following *business* day *if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (g) of this rule the term ''cancelled'' shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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6420. Transaction Reporting

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(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6420 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following *business* day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which a decision to cancel is made] prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(F) For any trade *cancelled* [for which the decision to cancel occurs] on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) [if the decision to cancel occurs before 6:30 p.m., then] by 6:30 p.m. on the date *of cancellation if the trade is cancelled before 6:30 p.m.* [when the decision to cancel occurs], or (ii) [if the decision to cancel occurs at or after 6:30 p.m., then] by 6:30 p.m. on the following *business* day *if the trade is cancelled at or after 6:30 p.m.*

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (f) of this rule the term ''cancelled'' shall mean the time at which (i) the member with the reporting responsibility informs its contra party,

or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

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6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER EQUITY SECURITIES

* * * * *

6620. Transaction Reporting

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(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the *time the trade is cancelled* [decision to cancel the trade].

(B) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following *business* day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which a decision to cancel is made] prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time and *cancelled* [for which the decision to cancel occurs] after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following *business* day by 6:30 p.m.

(F) For any trade cancelled [for which the decision to cancel occurs] on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) [if the decision to cancel occurs before 6:30 p.m., then] by 6:30 p.m. on the date of cancellation if the trade is cancelled before 6:30 p.m. [when the decision to cancel occurs], or (ii) [if the decision to cancel occurs at or after 6:30 p.m., then] by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (f) of this rule the term ''cancelled'' shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 22, 2004, the Commission approved a proposed rule change requiring members to report to Nasdaq the cancellation of any trade previously reported to Nasdaq, unless the trade is cancelled by Nasdaq staff.[6] Soon after Commission approval, questions were raised about the meaning of certain text in the new rules. Specifically, the rule requires trades executed and cancelled during normal market hours to be reported within 90 seconds of ''the decision to cancel the trade.'' Trades cancelled outside normal market hours also must be reported by certain specified times. Because the phrase ''the decision to cancel the trade'' is susceptible to multiple legitimate interpretations, thus making it difficult to impose a uniform standard against which compliance with the rule can be judged, Nasdaq is proposing new language to clarify the events that trigger the reporting obligation. The events are as follows: (1) When the member with the reporting obligation informs its contra party, or is informed by its contra party, that a trade is being cancelled, (2) when the member and its contra party agree to cancel a trade if neither party has the ability to unilaterally cancel it, or (3) the member takes an action to cancel the trade on its books and records. The new language also makes it clear that the earliest occurrence of any one of three specified events triggers the reporting obligation. For example, if a member and its contra party decide at 11 a.m. that a trade executed that same day (after 9:30 a.m.) should be cancelled, the member with the reporting obligation must report the cancellation to Nasdaq by 11:01:30 a.m., even if the member does not take action to remove the trade from its books and records until some time later that day. Requiring the trigger to be the earliest of the three events is designed to ensure the reporting of the cancellation as soon as possible.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

[6] *See* Securities Exchange Act Release No. 50059 (July 22, 2004), 69 FR 45103 (July 28, 2004).

[7] The original proposed rule change and this current filing only establish an obligation to *report* cancellations and do not establish rules governing the circumstance in which it is permissible to cancel trades.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The proposed rule change will establish clear standards for determining when the obligation to report a cancelled trade is triggered, and thus it assists members in complying with the reporting obligation. The clear standards also will make it easier for the NASD to audit for compliance with the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed,[10] or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–027 and should be submitted on or before March 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–4293 Filed 3–4–05; 8:45 am]

BILLING CODE 8010–01–P

[10] Nasdaq has provided the Commission the pre-filing notification as required by subparagraph (iii) of Rule 19b–4(f)(6), and intends to make the change operative 60 days after the date of filing.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51276; File No. SR–NYSE–2004–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Adopt New Rule 401A (''Customer Complaints''), and an Amendment to Rule 476A (''Imposition of Fines for Minor Violations of Rules''), Adding Rule 401A to the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Proposed new Exchange Rule 401A (''Customer Complaints'') would require members and member organizations (the ''Membership'' or ''Member Firms'') to send acknowledgement of any customer complaint subject to the reporting requirements of Rule 351(d) within 15 business days of receiving such complaint, and to respond to the issues raised in such complaint within a reasonable period of time. The proposed corresponding amendment to Rule 476A (''Imposition of Fines for Minor Violations of Rules'') would allow the Exchange to sanction the Membership's less serious violations of the acknowledgement provisions of proposed new Rule 401A pursuant to the minor fine provisions of Rule 476A. Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Rule 401A

Customer Complaints

(a) For every customer complaint they receive that is subject to the reporting requirements of Rule 351(d), members and member organizations must:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) Acknowledge receipt of the complaint within 15 business days of receiving it, and

(2) Respond to the issues raised in the complaint within a reasonable period of time.

(b) Each acknowledgement and response required by this rule must be conveyed to the complaining customer by appropriate method:

(1) Acknowledgements and responses to written complaints must be either:

(i) In writing, mailed to the complaining customer's last known address, or

(ii) Electronically transmitted to the e-mail address from which the complaint was sent (method only permissible for electronically transmitted complaints).

(2) Acknowledgements and responses to verbal complaints must be either:

(i) In writing, mailed to the complaining customer's last known address, or

(ii) Made verbally to the complaining customer, and recorded in a log of verbal acknowledgements and responses to customer complaints.

(c) Written records of the acknowledgements, responses, and logs required by this rule must be retained in accordance with Rule 440 (''Books and Records'').

* * * * *

Rule 476A

Imposition of Fines for Minor Violation of Rules

(Rule 476A (a) through (e) unchanged)

Supplementary Material: List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

* * * * *

Rule 387 requirements for customer COD/POD transactions

Rule 392 notification requirements

Failure to acknowledge customer complaint within 15 business days, as required by Rule 401A

Rule 407 requirements for transactions of employees of the Exchange, members or member organizations

Rule 407A reporting and notification requirements for members

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. NYSE Rule 351 (''Reporting Requirements'') specifies several occurrences, incidents, and periodic information that the Membership must report to the Exchange. NYSE Rule 351(d) requires the Membership to report to the Exchange statistical information regarding specified verbal and written customer complaints.[3] Each complaint is classified by product and category, and attributed to a registered representative and branch office. The Exchange collects, aggregates, and analyzes these statistics to identify and monitor regulatory problems, focus its field examinations of Member Firms, identify content for its qualification examinations, and modify its continuing education programs. However, there is currently no NYSE rule requiring the Membership to respond to, or even acknowledge, such complaints. Recent Exchange examinations revealed several instances in which Member Firms did not, in fact, respond to or acknowledge customer complaints.

2. Statutory Basis

Proposed new Rule 401A and the corresponding amendment to NYSE Rule 476A are consistent with the requirements of Section 6(b)(5)[4] of the Exchange Act, which requires that the rules of the Exchange 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 in that it improves customer relations, supervision of registered representatives, early detection of potential regulatory problems, prevention of future securities violations, identification of issues requiring more thorough coverage in continuing education programs, and oversight of the Membership. The proposed rule change is also consistent with Section 6(b)(6)[5] of the Exchange Act, which requires the rules of the Exchange to provide for its members and persons associated with its members to be appropriately disciplined for violations of those rules through fitting sanctions, including the imposition of fines.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–59 in the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–59. This file number should be included on the

[3] NYSE Information Memo No. 03–38, dated September 19, 2003, specifies that ''[a]ll complaints, regardless of how delivered (oral, written, e-mail or fax), are required to be reported to the Exchange.''

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

subject line of e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–NYSE–2004–59 and should be submitted on or before March 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–915 Filed 3–4–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0432]

Telesoft Partners II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to LogLogic, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P. and Telesoft NP Employee Fund, LLC, all Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of LogLogic, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 14, 2005.

Jaime Guzman-Fournier,

Acting Associate Administrator for Investment.

[FR Doc. 05–4319 Filed 3–4–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, March 24, 2005 at 8:30 a.m. at the Marion County Public Library at Glendale Mall, 6101 N. Keystone Avenue, Indianapolis, IN 46220, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Francine Protogere in writing or by fax, in order to be put on the agenda. Francine Protogere, District Counsel, SBA Indiana District Office, 429 N. Pennsylvania Street, Suite 100, Indianapolis, IN 46204, phone (317) 226–7272 Ext. 270, fax (317) 226–7259, e-mail: *Francine.Protogere@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: February 28, 2005.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 05–4320 Filed 3–4–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5008]

Notice Convening an Accountability Review Board for the November 24, 2004 Murder of Mr. James C. Mollen, an Employee of the U.S. Embassy in Baghdad, Iraq

Pursuant to Section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), I have determined that the November 24, 2004 shooting death of Mr. James C. Mollen, an employee of the U.S. Embassy in Baghdad, Iraq, involved loss of life at or related to a U.S. mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and the circumstances of the attack and to report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandate.

I have appointed Edward G. Lanpher, a retired U.S. ambassador, as Chair of the Board. He will be assisted by M. Bart Flaherty, Frederick Mecke, Mike Absher, Laurie Tracy and by Executive Secretary to the Board, Bruce Thomas. They bring to their deliberations distinguished backgrounds in government service and/or in the private sector.

The Board will submit its conclusions and recommendations to me within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of this incident should contact the Board promptly at (202) 203–7149 or send a fax to the Board at (202) 203–7143.

This notice shall be published in the **Federal Register**.

Dated: February 28, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–4358 Filed 3–4–05; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 2005–20490]

Air Carrier Access Act Aircraft Inspection and Certification Initiative

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: Beginning on March 7, 2005, the Federal Aviation Administration (FAA) will be assisting the Office of the Secretary (OST) in verifying that the aircraft accessibility requirements of the Air Carrier Access Act (ACAA) and its implementing regulations, 14 CFR Part 382 (Part 382), are being met by U.S. certificated and commuter air carriers. FAA inspectors, in the normal course of their duties, will be performing on-site inspections of U.S. airline aircraft that are subject to the design requirements of the ACAA and Part 382, which prohibit discrimination against disabled air travelers in air transportation. The FAA will also take steps to verify that these requirements are met when new aircraft enter the U.S. airline fleet.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590, (202) 366–9342 (voice), (202) 366–7152 (Fax), *blane.workie@ost.dot.gov* (e-mail). Arrangements to obtain the notice in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION: Full compliance with the mandates of Part 382 is a priority of the Department of Transportation (Department or DOT). Part 382 is intended to promote accessibility and prohibit discrimination for air travelers with disabilities. This notice concerns those portions of Part 382 that require that carriers order or modify aircraft to improve accessibility. The requirements regarding aircraft accessibility are covered by 14 CFR 382.21.

The requirements of § 382.21 are tied to the number of seats or aisles on an aircraft. They apply to all aircraft operated under 14 CFR part 121 ordered after the effective date of Part 382 (April 5, 1990) or delivered to an air carrier after April 5, 1992. Part 121 contains the FAA's rules on air carrier certification and the operation of large aircraft by carriers certificated under that Part. Section 382.21 requires carriers to provide:

(1) Movable armrests on at least one half of the aisle seats on aircraft with 30 or more seats (382.21(a)(1));

(2) A priority storage area for a passenger's folding wheelchair on aircraft with 100 or more seats (382.21(a)(2));

(3) An accessible lavatory on aircraft with more than one aisle (382.21(a)(3)); and

(4) A carrier-supplied on-board wheelchair in certain instances (382.21(a)(4) and (b)(2)).

The rule does not require retrofitting of aircraft that were in service on or before the effective date of the rule with the following two exceptions: first, a carrier must, under certain conditions, provide an on-board wheelchair on aircraft with more than 60 seats (*see* 382.21(a)(4) and 382.21(b)(2)), effective April 5, 1992; second, under 382.21(c), if an aircraft operated under Part 121 undergoes a cabin refurbishment in which seating, lavatories, or other cabin interior elements are replaced, the aircraft, once renovated, must meet the requirements with respect to armrests and lavatories, or the replaced elements (*e.g.,* in-cabin stowage areas) as specified in 382.21(a).

The Department wishes to ascertain the current compliance status of air carriers with respect to these requirements. The Department's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) began several investigations into compliance with section 382.21 in 2002, and most of these investigations have culminated in consent orders assessing civil penalties and requiring that air carriers take action to comply with the requirements of section 382.21. The Enforcement Office continues to investigate air carriers that it believes may be operating aircraft that are non-compliant. However, in addition to the continued enforcement efforts, the Department believes that having FAA inspectors check new aircraft being added to carrier fleets as well as aircraft already in service that are subject to the rule, in connection with their regular air carrier safety monitoring activities, would assist in ensuring that air carriers fulfill their nondiscrimination and accessibility responsibilities towards passengers with disabilities.

It is important to note that the FAA's involvement would be limited to conducting inspections to verify that aircraft meet the ACAA and Part 382 design requirements. Enforcement responsibilities with regard to the ACAA and Part 382 would remain in the Enforcement Office. The results of the FAA inspections of aircraft would be forwarded to the Enforcement Office for follow-up with the airlines involved in instances where it appears that the carrier's aircraft may not be in compliance with the ACAA and Part 382.

Issued this 24th day of February 2005, in Washington DC.

Jeffrey A. Rosen,

General Counsel, U.S. Department of Transportation.

[FR Doc. 05–4296 Filed 3–4–05; 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 February 18, 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–2005–20405.

Date Filed: February 14, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 7, 2005.

Description: Application of U.S. Helicopter Corporation, requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory of possession of the United States.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–4308 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 18, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20422.

Date Filed: February 16, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0825 dated 18 February 2005, Mail Vote 438—TC3 Japan Korea-South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions, PTC3 0826 dated 18 February 2005, Mail Vote 439—TC3 Japan, Korea-South East Asia between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions.

Intended effective date: 1 April 2005.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–4307 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 25, 2004 page 52324.

DATES: Comments must be submitted on or before April 6, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Safety Improvements Report Accident Prevention Counselor Activity Reports.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0057

Forms(s): FAA Forms 8740–5 and 8740–6

Affected Public: A total of 4,792 respondents.

Abstract: The affected public for this collection are pilots, airport operators, charter and commuter aircraft operators engaging in air transportation. Safety improvement reports are used by airmen to notify the FAA of hazards to flight operations. Accident Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program accomplishments.

Estimated Annual Burden Hours: An estimated 2,042 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 28, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and information Division, APF–100.

[FR Doc. 05–4287 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–14]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 14, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 1, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2003–14227.

Petitioner: Kenmore Air Harbor, Inc.

Section of 14 CFR Affected: 14 CFR 135.154(b)(2).

Description of Relief Sought: To permit Kenmore Air Harbor, Inc., to operate its fleet of DHC2 and DHC3 aircraft, for a period of 90 days after March 29, 2005, without being equipped with an approved terrain awareness and warning system (TAWS) that meets the requirements for class B equipment in Technical Standard Order (TSO) C151.

[FR Doc. 05–4363 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration's Government/Industry Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures policy and development criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet May 9 and 10, 2005 from 9 a.m. to 4:30 p.m. The Charting Group will meet May 11 and 12, 2005 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the FAA National Aeronautical Charting Office, AVN–500, 1305 East-West highway (SSMC 3, Room 4527), Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 650 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528. For information relating to the Charting Group, contact Richard V. Powell, Office of System Operations & Safety, ATO–R, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8790, fax: (202) 493–4266.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Government/Industry Aeronautical Charting Forum to be held from May 9–12, 2005, from 9 a.m. to 4:30 p.m. at the National Aeronautical Charting Office, AVN-500, 1305 East-West Highway, SSMC 3, Room 4527, Silver Spring, MD 20910.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions regarding recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 15, 2005, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by April 15, 2005. Public statements will only be considered if time permits.

Issued in Washington, DC, on February 28, 2005.

Richard V. Powell,

Co-Chair, Government/Industry, Aeronautical Charting Forum.

[FR Doc. 05–4288 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The Maritime Administration (MARAD) published a 60-day notice and request for comments on this information collection in the **Federal Register** (69 FR 69668) on November 30, 2004, indicating comments should be submitted by January 31, 2005. One comment was received. The commenter asserted that no waivers should be given, except in the case of medically verified disability, and there is an obligation these students assume and they should pay it. In addition, the commenter indicated that taxpayers are burdened by the costs of this education and they deserve recompense. Also, the commenter asked how many students sought waivers last year and on what grounds.

46 CFR part 310 authorizes the Maritime Administrator to grant waivers in cases where there would be undue hardship or impossibility of performance of the provisions of the agreement, due to accident, illness or other justifiable reason. The regulation also allows for deferments in exceptional cases for entry into a maritime-related graduate course of study, or the graduate may seek approval to accept maritime-related shoreside employment after first seeking afloat employment. The Maritime Administration (MARAD) is cognizant of the obligation of graduates as we review waiver and deferral requests. In 2004, MARAD granted 18 employment determination requests for shoreside employment. These employment determinations were granted for maritime-related shoreside employment on the recommendation from the U. S. Merchant Marine Academy, only after the graduates diligently sought afloat employment and were unable to obtain it.

DATES: Comments must be submitted on or before April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366–0284; fax: (202) 366–7403; or e-mail: *rita.jackson@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation.

OMB Control Number: 2133–0510.

Type of Request: Extension of currently approved collection.

Affected Public: The respondents are students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the

State Maritime Academies who request waivers of service obligations.

Forms: MA–935, MA–936 and MA–937.

Abstract: This information collection is essential for determining if a student or graduate of the U.S. Merchant Marine Academy, or subsidized student or graduate of a State maritime academy, has a waivable situation preventing them from fulfilling the requirements of a service obligation contract.

Annual Estimated Burden Hours: 9 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on March 2, 2005

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4359 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on November 30, 2004. No comments were received.

DATES: Comments must be submitted on or before April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Administration, Office of Sealift Support, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2646; fax: (202) 493–2180, or e-mail: *patricia.thomas@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

OMB Control Number: 2133–0504.

Type of Request: Extension of currently approved collection.

Affected Public: Maritime training institutions such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Forms: None.

Abstract: The Maritime Administration requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/justification prior to acquiring the property.

Annual Estimated Burden Hours: 60 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on February 16, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4360 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2005–20377]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TYPHOON.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20377 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 6, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–20377. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TYPHOON is:

Intended Use: Six person charter.

Geographic Region: Washington State.

Dated: February 10, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4356 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

DATES: Comments must be submitted on or before April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Tewabe Asebe at the National Highway Traffic Safety Administration (NHTSA), Office of Crashworthiness Standards, (202) 366–2365, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. A **Federal Register** notice that provided a 60-day comment period was published on June 27, 2003 (68 FR 38418, U.S. DOT Docket Number NHTSA–02–14038), and the agency received no comments.

National Highway Traffic Safety Administration

Title: 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Number: 2127–0518.

Type of Request: Regular.

Abstract: FMVSS No. 218, ''Motorcycle helmets,'' requires labeling for each helmet by the manufacturer. The labeling ensures important safety information to helmet owners and enables NHTSA to identify the helmet manufacturer for enforcing the Standard.

Affected Public: Motorcycle helmet manufacturers.

Estimated Total Annual Burden: The total annual cost to the respondents is estimated as $720,000.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On: The accuracy of the Department's estimate of the burden of the motorcycle helmets labeling requirement. The standard's labeling requirement does not require the collection of information by the Federal government. It only requires that the labeling be exhibited on each helmet as specified in the Standard.

A comment to OMB must be received within 30 days of publication.

Issued on: February 28, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4361 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on August, 11, 2004, Volume 69, Number 154, Page Numbers 48906 and 48907.

This document describes two collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Michael J. Jordan, National Highway Traffic Safety Administration (NVS–216), 400 Seventh Street, SW. (Room 2318), Washington, DC 20590. Mr. Jordan's telephone number is (202) 493–0576.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consumer Complaint Information.

OMB Control Number: 2127–0008.

Type of Request: Renewal of an Existing Collection of Information.

Abstract: Under Chapter 301 of Title 49 of the United States Code, manufacturers of motor vehicles and items of motor vehicle equipment must notify owners and provide a free remedy (*i.e.*, a recall) when it has been determined that a safety-related defect exists in the manufacturer's product. NHTSA investigates possible safety defects and may order recalls. NHTSA solicits information from vehicle owners, which is used to identify and evaluate possible safety-related defects and provide evidence of the existence of such defects.

Consumer complaint information takes the form of a Vehicle Owner's Questionnaire (VOQ), which is a paper, self-addressed mailer that consumers complete. This mailer contains owner information, product information, failed component information, and incident information. It may also take the form of an electronic VOQ containing the same information as identified above, which can be submitted via NHTSA's Internet Web site or by calling the Department of Transportation's Auto Safety Hotline. Or, it may take the form of a consumer letter. All consumer complaint information, in addition to other sources of available information, is reviewed by NHTSA staff to determine whether a safety-related defect trend or catastrophic failure is developing that would warrant the opening of a safety defect investigation.

Affected Public: Individuals and households.

Estimated Total Annual Burden: 12,324 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 28, 2005.

Kathleen C. DeMeter,

Director, Office of Defects Investigation Enforcement.

[FR Doc. 05–4362 Filed 3–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 1, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 6, 2005 to be assured of consideration.

Departmental Offices/Executive Office for Assets Foreiture

OMB Number: 1505–0152.

Form Numbers: TD F 92–22.46.

Type of Review: Extension.

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency.

Description: TD F 92–22.46 is necessary for the application for receipt of seized assets by Federal, State and Local Law Enforcement agencies.

Respondents: Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 Minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Christopher L. Davis,

Treasury PRA Assistant.

[FR Doc. 05–4327 Filed 3–4–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 1, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 6, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1755.

Form Number: IRS Form 8878.

Type of Review: Extension.

Title: IRS *e-file* Signature Authorization-Application for Extension of Time to File.

Description: Form 8878 is used to allow taxpayers to enter their PIN on their electronically-filed application of extension of time to file.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Respondent/Recordkeeper:

Learning about the law or the form—4 min.

Preparing the form—12 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 630,000 hours.

OMB Number: 1545–1756.

Revenue Procedure Number: Revenue Procedure 2001–56.

Type of Review: Extension.

Title: Demonstration Automobile Use.

Description: This revenue procedure provides optional simplified methods for determining the value of the use of demonstration automobiles provided to employees by automobile dealerships.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 20,000.

Estimated Burden Hours Recordkeeper: 5 hours.

Estimated Total Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1758.

Form Number: IRS Form 8879.

Type of Review: Extension.

Title: IRS *e-file* Signature Authorization.

Description: Form 8879 is used to allow taxpayers to authorize the Electronic Return Originators to enter the taxpayer's PIN on the electronically-filed tax return.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 8,000,000.

Estimated Burden Hours Respondent/Recordkeeper:

Learning about the law or the form—12 min.

Preparing the form—15 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,000,000 hours.

OMB Number: 1545–1912.

Form Number: IRS Form 8893.

Type of Review: Extension.

Title: Election of Partnership Level Tax Treatment.

Description: Internal Revenue Code (IRC) section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedures. Form 8893 will allow IRS to better track these elections by providing a standardized format for this election.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—1 hr., 25 min.

Learning about the law or the form—24 min.

Preparing and sending the form to the IRS—25 min.

Frequency of response: Other (one time election).

Estimated Total Reporting/Recordkeeping Burden: 227 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–4328 Filed 3–4–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, March 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, March 25, 2005 from 12:30 p.m. Pacific Time to 1:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: March 1, 2005.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–4385 Filed 3–4–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 7, 2005

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 209, 234, and 236

Standards for Development and Use of Processor-Based Signal and Train Control Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 234, and 236

[Docket No. FRA–2001–10160]

RIN 2130–AA94

Standards for Development and Use of Processor-Based Signal and Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing a performance standard for the development and use of processor-based signal and train control systems. The rule also covers systems which interact with highway-rail grade-crossing warning systems. The rule establishes requirements for notifying FRA prior to installation and for training and recordkeeping. FRA is issuing these standards to promote the safe operation of trains on railroads using processor-based signal and train control equipment.

DATES: This rule is effective June 6, 2005. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the Federal Register as of June 6, 2005.

ADDRESSES: Except for good cause shown, any petition for reconsideration of any part of this rule must be submitted not later than May 6, 2005. Any petition for reconsideration should reference FRA Docket No. FRA–2001–10160 and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590. Petitions, received by the FRA Docket Clerk will be sent to the DOT Docket Management System (DMS) located on the Plaza level of the Nassif Building at the Department of Transportation. You can review public dockets, including any petitions for reconsideration received there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review any petition for reconsideration on-line at the DMS Web site at *http://dms.dot.gov.* Please note that anyone is able to search the electronic form of all submissions into any of FRA's dockets by the name of the individual making the submission (or signing the submission, 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.*

FOR FURTHER INFORMATION CONTACT: Tom McFarlin, Staff Director, Signal and Train Control Division, Office of Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6203); or Melissa Porter, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6034).

SUPPLEMENTARY INFORMATION:

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I. Introduction

FRA is issuing a performance standard for processor-based signal and train control systems. FRA began the process of developing a rule in 1997 when its Railroad Safety Advisory Committee (RSAC) was tasked with developing a proposed rule for FRA's consideration. RSAC made consensus recommendations to FRA on a proposed rule; FRA agreed to these recommendations and published them as a notice of proposed rulemaking (NPRM) on August 10, 2001 (66 FR 42352). FRA received quite a few public comments on the NPRM. This notice responds to comments on the NPRM and issues the final rule. The standards grew out of the proposed rule requiring that processor-based signal and train control systems meet or exceed the safety level of the traditional signal systems they replace. The preamble discusses the statutory background, the regulatory background, the RSAC proceedings, the alternatives considered and the rationale for the option selected, the proceedings to date, as well as the comments and conclusions on general issues. Other comments and resolutions are discussed within the corresponding section-by-section analysis.

II. Statutory Background

FRA has broad statutory authority to regulate all areas of railroad safety. 49 U.S.C. 20103(a); 49 CFR 1.49. The Federal Railroad Safety Act of 1970, Public Law 91–458, contained this broad grant of authority and supplemented the older rail safety laws then in existence. The older safety laws had been enacted in a piecemeal approach and addressed specific fields of railroad safety. For instance, the Signal Inspection Act, 49 U.S.C. 26 (recodified at 49 U.S.C. 20502 *et seq.* (1994)), has governed the installation and removal of signal equipment since its enactment August 26, 1937. Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date all of the acts were repealed and their provisions were recodified into Title 49 Chapters 201–213.

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of railroad track, signal systems, railroad communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of railroad signal and train control systems, FRA has issued regulations, found at 49 CFR part 236 (''part 236''), addressing topics such as the security of signal apparatus housings against unauthorized entry (49 CFR 236.3), location of roadway signals (49 CFR 236.21), and the testing of relays (49 CFR 236.106). Hereafter all references to parts and sections shall be parts and sections located in Title 49 of the Code of Federal Regulations.

FRA continually reviews its regulations and revises them as needed to keep up with emerging technology. FRA's need to review its regulatory

scheme with respect to emerging technology in the signal and train control arena was acknowledged by Congress in Section 11 of the Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102–365, Sep. 3, 1992), entitled ''Railroad Radio Communications.'' Section 11(a) of RSERA mandated that the Secretary conduct a safety inquiry to assess, among other areas,

(6) The status of advanced train control systems that are being developed, and the implications of such systems for effective railroad communications; and

(7) The need for minimum Federal standards to ensure that such systems provide for positive train separation and are compatible nationwide.

106 Stat. 980. Section 11(b) required the Secretary to

submit to Congress within 4 months after the completion of such inquiry a report on the results of the inquiry along with an identification of appropriate regulatory action and specific plans for taking such action.

Id.

FRA conducted the inquiry required by RSERA and submitted a comprehensive Report to Congress on July 8, 1994, entitled *Railroad Communications and Train Control* (1994 PTC Report). A copy of this 1994 PTC Report is in the docket of this rulemaking. As part of the 1994 PTC Report, FRA called for implementation of an action plan to deploy PTC systems. The report forecast substantial benefits of advanced train control technology to support a variety of business and safety purposes, but noted that an immediate regulatory mandate for PTC could not be currently justified based upon normal cost/benefit principles relying on direct safety benefits. The report outlined an aggressive Action Plan implementing a public/private sector partnership to explore technology potential, deploy systems for demonstration, and structure a regulatory framework to support emerging PTC initiatives.

Since 1994, the Congress has appropriated and FRA has committed approximately $40 million through the Next Generation High Speed Rail Program and the Research and Development Program to support development, testing and deployment of PTC prototype systems in Illinois, Alaska, and the Eastern railroads' on-board electronic platforms. As called for in the Action Plan, the FRA also launched an effort to structure an appropriate regulatory framework for facilitating implementation of PTC technology and for evaluating future safety needs and opportunities. For such a task, FRA desired input from the developers, prospective purchasers and operators of this new technology. Thus, in September of 1997, the Federal Railroad Administrator asked RSAC to address several issues involving PTC, including the development of performance standards for PTC systems. RSAC's involvement in this rulemaking will be discussed later in the preamble.

Since the issuance of FRA's 1994 PTC Report, Congress has twice requested the Secretary of Transportation to submit additional reports on PTC; first in 1994, and more recently in 2003. In 1994, Congress directed the Secretary to submit a progress report.

The Secretary of Transportation shall submit a report to the Congress on the development, deployment, and demonstration of positive train control systems by December 31, 1995.

49 U.S.C. 20150. On May 17, 2000, FRA submitted a letter report responding to Section 20150 (2000 PTC Report). A copy of the 2000 PTC Report is in the docket of this rulemaking. The report noted the progress being made toward the deployment of PTC systems but concluded that deployment on the entire national rail system cannot be justified on safety grounds alone. FRA indicated that it would continue to encourage railroads to deploy PTC voluntarily. The report noted that RSAC, at FRA's request, had begun to address the PTC issue, and had issued a report to FRA in September 1999 (1999 RSAC Report) entitled *Implementation of Positive Train Control Systems* that detailed current PTC system projects, estimated accidents preventable by PTC systems, and estimated the costs and benefits of PTC systems as applied to the major railroads.

The 1999 RSAC Report confirmed the core PTC safety functions described in the 1994 PTC Report (prevent train-to-train collisions; enforce speed restrictions and temporary slow orders; and provide protection for roadway workers and their equipment operating under specific authorities). It also referred to additional safety functions that might be included in some PTC architecture (*e.g.*, warning of on-track equipment operating outside the limits of authority; enforcement of hazard detection warnings; and a future capability for generating data for transfer to highway users to enhance warning at highway-rail grade crossings).

The 1999 RSAC Report found that railroad safety benefits of PTC could not support the investments necessary to deploy the system. The report estimated that PTC deployment on the Class 1 railroads would cost about $1.2 billion to equip the lines with a level 1 type PTC system (address core PTC functions only), and about $7.8 billion to equip the lines with a level 4 type PTC system (increased functionality addressing additional safety monitoring systems and enhanced traffic management capabilities). These costs are total discounted life cycle costs, including procurement, installation, and maintenance, over 20 years. The 20 year total discounted benefits from avoided accidents ranged from about $500 million for a level 1 PTC system, to about $850 million for a level 4 PTC system. The Committee was not able to reach conclusions regarding the non-safety benefits of PTC-related technologies.

As part of the FRA appropriations for fiscal year 2003, Congress requested FRA to update cost/benefit numbers contained in the 2000 PTC Report to Congress. The Conference Report on the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) provided in pertinent part as follows:

Positive train control.—The conferees direct FRA to submit an updated economic analysis of the costs and benefits of positive train control and related systems that takes into account advances in technology and system savings to carriers and shippers as well as other cost savings related to prioritized deployment of these systems, as proposed by the Senate. This analysis must be submitted as a letter report to the House and Senate Committees on Appropriations by October 1, 2003.

H.R. Rep. No. 108–10, 108th Cong. 1st Sess. 1286–7. FRA submitted the requested PTC letter report to Congress on August 18, 2004 and a copy of the report is in the docket of this rulemaking. The report indicates that substantial public benefits would likely flow from the installation of PTC systems on the railroad system, although the total amount of these benefits is subject to debate. The report reaffirmed the conclusions reached in the 1994 and 2000 PTC Reports that the safety benefits of PTC systems are relatively small in comparison to the huge costs of installing the PTC systems.

In light of the cost/benefit numbers, an immediate regulatory mandate for PTC could not be currently justified based upon normal cost/benefit principles relying on direct railroad safety benefits. FRA has, therefore, chosen to issue a final rule that establishes a performance standard for processor-based train control systems, but does not require that they be installed. PTC systems can enhance the

safety of railroad operations; the rule will help facilitate the establishment of such systems.

III. Regulatory Background

Part 236 was last amended in 1984. At that time, signal and train control functions were performed principally through use of electrical circuits employing relays as the means of effecting system logic. This approach had proven itself capable of supporting a very high level of safety for over half a century. However, electronic controls were emerging on the scene, and several sections of the regulations were amended to take a more technology-neutral approach to the required functions (*see* §§ 236.8, 236.51, 236.101, 236.205, 236.311, 236.813a). This approach has fostered introduction of new, more cost effective technology while providing FRA with strong enforcement powers over systems that fail to work as intended in the field.

Since that time, FRA has worked with railroads and suppliers to apply the principles embodied in the regulations to emerging technology and to identify and remedy initial weaknesses in some of the new products. As a result, thousands of interlocking controllers and other electronic applications are embedded in traditional signal systems. Further technological advances may provide additional opportunities to increase safety levels and achieve economic benefits as well. For instance, implementation of innovative PTC systems may employ new ways of detecting trains, establishing secure routes, and processing information. This presents a far greater challenge to both signal and train control system developers and FRA. This challenge involves retaining a corporate memory of the intricate logic associated with railway signaling, while daring to use whole new approaches to implement that logic—at the same time stretching the technology to address risk reduction opportunities that previously were not available. For FRA, the challenge is to continue to be prepared to make safety-based decisions regarding this new technology, without impairing the development of this field. Providing general standards for the development and implementation of products utilizing this new technology is necessary to facilitate realization of the potential of electronic control systems and for safety and efficiency.

FRA has already used its safety authority to grant waivers and issue orders to support innovation in the field of train control technology. FRA has granted test waivers for the Union Pacific Railroad Company (UP)/ Burlington Northern and Santa Fe Railway Company (BNSF) Positive Train Separation (PTS) project in the Pacific Northwest, the National Railroad Passenger Corporation (Amtrak) Incremental Train Control System (ITCS) in the State of Michigan, the CSX Transportation, Inc. (CSXT) Communication-Based Train Management (CBTM) project in South Carolina and Georgia, and the Alaska Railroad PTC project. On September 19, 1996 FRA granted conditional revenue demonstration authority for ITCS. In 1998, FRA issued a final order for the installation of the Advanced Civil Speed Enforcement System (ACSES) on the Northeast Corridor (63 FR 39343, Aug. 21, 1998). See also 64 FR 54410, Oct. 6, 1999 (delaying effective date of such order).

Although FRA expects to continue its support for these current projects, the need for controlling principles in this area has become patently obvious. This rulemaking has provided a forum for identifying and codifying those principles.

IV. RSAC

A. Overview

In March 1996, FRA established the RSAC, which provides a forum for consensual rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Department/ Brotherhood of Locomotive Engineers (ATDD/BLE)
Amtrak
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employees (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association
Hotel Employees & Restaurant Employees International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Transportation Safety Board (NTSB)*
Railway Progress Institute (RPI)
Safe Travel America
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWUA)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)

*Indicates associate membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendation] to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force or other subgroup reports for the working group. If a working group comes to consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group and subgroup levels in discussing the issues and options and in drafting the language of the consensus proposal and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgement on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group is unable to reach consensus on recommendations for

action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

B. The PTC Working Group

On September 30, 1997, the RSAC accepted a task (No. 97–6) entitled ''Standards for New Train Control Systems.'' The purpose of this task was defined as follows: ''To facilitate the implementation of software based signal and operating systems by discussing potential revisions to the Rules, Standards and Instructions (Part 236) to address processor-based technology and communication-based operating architectures.'' The task called for the formation of a working group to include consideration of the following:

- Disarrangement of microprocessor-based interlockings;
- Performance standards for PTC systems at various levels of functionalities (safety-related capabilities); and
- Procedures for introduction and validation of new systems.

RSAC also accepted two other tasks related to PTC, task Nos. 97–4 and 97–5. These tasks dealt primarily with issues related to the feasibility of implementation of PTC technology.

FRA gratefully acknowledges the participation and leadership of representatives of the following organizations who served on the PTC Working Group (hereafter Working Group):

AAR, including members from
  BNSF
  Canadian National
  Consolidated Rail Corporation
  CSX
  Metra
  Norfolk Southern Railway Company
  UP
AASHTO
Amtrak
APTA
ASLRRA
ATDD/BLE
BLE
BMWE
BRS
FRA
High Speed Ground Transportation Association
IBEW
RPI
UTU

Staff from the National Transportation Safety Board and the Federal Transit Administration also participated in an advisory capacity.

In order to efficiently accomplish the three tasks assigned to it involving PTC issues, the Working Group empowered two task forces to work concurrently: The Data and Implementation Task Force, which handled tasks 97–4 and 97–5, and the Standards Task Force, which handled task 97–6.

The Data and Implementation Task Force finalized a report on the future of PTC systems and presented it, with the approval of RSAC, to the Administrator in September of 1999. Report of the Railroad Safety Advisory Committee to the Federal Railroad Administrator, ''Implementation of Positive Train Control Systems'' (September 8, 1999).

The Working Group also employed several teams, comprised of representatives from RSAC member organizations, who provided invaluable assistance. An Operating Rules Team was charged with working to ensure that appropriate railroad operating rules are part of any PTC implementation process, and a Human Factors Team was charged with evaluating human factor aspects of PTC systems. Members of these teams serve on both the PTC Standards Task Force and the Data and Implementation Task Force, and additional team members were drawn from the railroad community.

FRA staff and staff from the Volpe National Transportation Systems Center (the Volpe Center) worked with the Working Group and its subgroups. FRA responded to a consensus request from the Standards Task Force by contracting for assistance from the Center for Safety-Critical Systems at the University of Virginia.

The NPRM describes the role the Standards Task Force played in developing its recommendations to the Working Group and RSAC, which were in turn recommended to FRA by RSAC and formed the basis for the proposed rule. The Standards Task Force ceased to meet and exist after publication of the NPRM. References to the Standards Task Force and Working Group are reiterated here to provide a historical perspective regarding development of the RSAC recommendations on which the NPRM was based. These points are discussed to show the origin of certain issues and the course of discussion on these issues at the Task Force and Working Group levels. We believe this helps illuminate the factors FRA weighed in making its regulatory decisions at the NPRM stage, and the logic behind those decisions, most of which are still embodied in this final rule.

V. Discussion of Alternatives Considered and the Rationale for the Option Selected

As previously noted, RSAC recommended to FRA that it adopt the proposed rule recommended to RSAC by the Working Group. FRA concluded that the recommended proposed rule would satisfy its regulatory goals and issued an NPRM that tracked the RSAC recommendation on all major issues. Subsequent to the publication of the NPRM and the close of the comment period, informative discussions were had at the RSAC Working Group meetings regarding issues and concerns raised by written comments. These discussions contributed greatly to FRA's knowledge and understanding of the relevant subject matter, but, as discussed below, RSAC was ultimately unable to reach consensus on recommendations regarding the final rule.

In this final rule, FRA has carried forward the basic principles and structure and in many cases the language of the proposed rule with few or no changes, as initially recommended by the RSAC at the NPRM stage. The text of the final rule is substantially different from the NPRM in only a few ways. First, FRA is adding a provision delineating the responsibilities of railroads and suppliers regarding software hazards; second, FRA is providing alternatives for the abbreviated risk assessment; third, FRA is providing criteria for adjustment to the base case where changes are planned in the subject operation's speed and density; fourth, FRA is adding a provision as notice that entities may be subject to criminal penalties in accordance with 49 U.S.C. 21311; and last, FRA is adding an appendix with a schedule of civil penalties. In addition, minor edits for improved clarity and consistency have been added. Each of these substantive changes will be addressed in the section-by-section analysis of the rule text to which it applies. However, given the failure of RSAC to reach consensus at the final rule stage, FRA has determined the contents of the final rule, without the benefit of a formal RSAC recommendation, based on the agency's best judgment (informed, in many cases, by the excellent discussion of the issues within the Working Group).

A. Performance Standards vs. Prescriptive Standards

During early discussions in the advisory process, FRA noted that the existing ''Rules, Standards and Instructions'' (part 236) take a performance-oriented approach at the functional level, although—by virtue of the historical context in which they were initially prepared—they most often reference older technology. During the last decade and a half, this performance-oriented approach to specified functions has permitted the growth of electronic systems within signal and train control

systems without substantial regulatory change (albeit with growing ambiguity concerning the application of individual provisions to novel technical approaches). Wishing to maintain historical continuity and hasten preparation of a proposed and ultimately a final rule, FRA offered for consideration an initial redraft of part 236 that attempted a more technology-neutral approach to performance at the functional level, while also addressing PTC functions, as a possible starting point for the group's work.

Carrier representatives found the FRA draft to be unduly constricting, and asked thatthe group pursue higher-level performance standards. Supplier and labor representatives agreed to this approach, and FRA endeavored to support the Standards Task Force in pursuing it.

The group heard from representatives of the Research and Special Programs Administration, Federal Highway Administration's Office of Motor Carrier Safety (now Federal Motor Carrier Safety Administration), and APTA. FRA distributed a guidance document entitled ''Performance Standards: A Practical Guide to the Use of Performance Standards as a Regulatory Alternative,'' (Project on Alternative Regulatory Approaches, September 1981), a copy of which has been placed in the docket of this rulemaking.

In brief overview, the term ''performance standard'' has been variously applied to describe many different forms of regulatory approaches that avoid design specifications and other prescriptive requirements, such as mandates that actions be taken in a particular sequence, or in a particular manner, by the regulated entity. At the most permissive extreme, a performance standard for a railroad operating system might specify an ''acceptable'' level of safety performance (*e.g.*, number of fatalities per million train miles) and avoid any intervening action unless and until the performance of the regulated entity fell below that level. FRA believes that this type of approach would represent an abandonment of the agency's responsibility to promote safety, since it would necessarily assume optimum performance by the regulated entity (a condition not realized in practice) and would prevent helpful intervention until unacceptable consequences had already occurred. FRA has not sought to pursue this approach.

The least permissive performance standards include such approaches as requiring that a metal skin on the front of a locomotive have penetration resistance equivalent to that of a given thickness of a specified steel. In this example, the choice of material is left to the designer, but the options are not extensive. See, *e.g.*, § 238.209.

In the middle range of permissiveness, a performance standard might address acceptable performance parameters for a particular, mandated device, in lieu of a fixed physical description. For instance, FRA requirements for railroad tank cars carrying flammable compressed gas require the application of high temperature thermal protection that can be accomplished using a variety of materials, together with pressure relief valve capacity requirements adequate to permit safe evacuation and burn-off of the car's contents prior to catastrophic failure of the vessel in a fire environment (part 179, Appendix B (qualification test procedure)). This combination of regulatory requirements has been highly effective in preventing loss of life from violent detonation of tank cars involved in derailments (although compliance issues have been presented by disintegration of insulation blankets that could not be readily detected under the outer jacket of a car).

Some of the safety statutes administered by FRA contain performance-based criteria. For instance, the Signal Inspection Act, as codified at 49 U.S.C. 20502(b), states:

> A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating appurtenances * * * may be operated safely without unnecessary risk of personal injury.

However, recognizing the need to make a practical application of this broad statement, the law also requires that the system ''has been inspected and can meet any test prescribed under this chapter.'' What could otherwise be deemed a very broad performance standard is thus made more specific in practice.

B. Evaluation of Perfomance-Based Approach

The NPRM identified a variety of considerations relevant to whether, and in what form, performance standards should be employed in this and other settings. After review of the public comments on the NPRM, FRA is satisfied that, as a general matter, the performance standard contained in the final rule should be suitable for this context. That is—

- The standard is stated as a practical goal;
- It will be enforceable;
- It will be usable by small entities;
- It can be shown to yield safety that is equivalent to that required under the existing Rules, Standards and Instructions (RS&I) issued by FRA's predecessor the Interstate Commerce Commission (ICC) and carried forward by FRA in part 236;
- Its cost is reasonable;
- It provides means of determining compliance before safety is endangered; and
- As adapted in this final rule, analytical techniques needed to verify compliance are available.

This last point bears further mention. FRA expressed concern in the NPRM that a risk assessment technique, the Axiomatic Safety-Critical Assurance Process(ASACP), intended to provide an important toolset to establish compliance with the performance standard was still under development. Although that continued to be the case as FRA was preparing this final rule and submitting it for review and clearance, FRA has made appropriate changes to this final rule emphasizing FRA's conclusion that more than one type of risk assessment is acceptable.

FRA had also identified several desirable criteria with respect to promulgating a performance standard specifically for processor-based signal and train control technologies: Simplicity, relevancy, reliability, cost, and objectivity.

Simplicity: Although nothing about producing a safety-critical signal or train control system is inherently simple, the final rule is relatively simple and provides the railroads with a great deal of flexibility.

Relevancy: Like the NPRM, the final rule focuses on the safety-relevant characteristics of systems and emphasizes all relevant aspects of product performance.

Reliability: This criterion could also be referred to as precision. That is, the standard should be reliable in that the test applied should yield similar results each time it is applied to the same subject matters. This criterion remains a concern in relation to the functioning of the final rule, but FRA has determined that the challenges presented should be manageable.

Cost: FRA pointed out in the NPRM that demonstrating compliance with the standard should not be unduly expensive. In reviewing the comments and making adjustments to the final rule, FRA has structured a standard that is not unduly expensive.

Objectivity: A completely objective standard would allow for compliance to be determined through scientific study or investigation. This is another dimension of enforceability. Like the NPRM, the final rule includes a number of provisions intended to ensure that

application of the standard will be demonstrably objective.

C. Advantages of a Performance-Based Standard; Consideration of Disadvantages

This final rule presents the highest level performance requirements ever attempted by FRA. In the NPRM, FRA discussed at length both the reasons to pursue such a course and concerns perceived by the agency regarding its wisdom.

Since issuance of the NPRM, FRA has continued its inquiries into the advantages and limitations of high-level performance standards and the current utility of available risk assessment techniques to determine compliance with such standards. See, *e.g.,* Coglianese, Nash, and Olmstead, Performance-Based Regulation: Prospects and Limitations in Health, Safety, and Environmental Protection (Regulation Policy Program, John F. Kennedy School of Government, Harvard University 2002). FRA has been impressed both by the potential power of performance standards to foster innovation and by the fact that most regulatory implementations of the concept have been layered on top of prescriptive standards rather than replacing them. That is, practice in most agencies with similar missions has focused on being ''risk informed'' rather than ''risk driven.'' The fundamental reason for this is the inherent difficulty of predicting safety outcomes in complex environments.

FRA remains concerned that the performance-based approach of this final rule may not ensure progressive improvements in safety. Risk management practitioners typically set goals for incremental improvements in safety in connection with use of performance standards. By contrast, this final rule makes current risk levels the floor for future performance. However, if reductions in risk levels do not occur as part of the natural progression from application of the rule's performance based standards, the improvement in risk levels can be achieved by regulatory mandate. FRA refers in the final rule to the prerogative of the agency to order improvements in safety where they are supported by appropriate analysis.

In the NPRM, FRA also expressed doubt regarding whether the relevant technical, scientific, and railroad signaling communities are fully prepared to support implementation of the proposed rule. Although commenters did not appear to question the fact that the field of safety-critical systems is relatively new and undergoing a process of maturation, they did question some of FRA's assertions. For instance, a major signal supplier noted that suppliers do provide quantitative information concerning life-cycle safety performance in the transit market. The same supplier stated that the concept of product validation is much better settled than suggested by FRA in the NPRM and questioned FRA's suggestion that quantifying risk with respect to electronic systems was somehow more difficult than with electro-mechanical systems. Notably, however, the supplier was addressing this topic from the context of design and production of systems utilizing traditional safety concepts. The same commenter noted that much more challenging issues associated with less conventional systems (including those relying upon complex commercial off-the-shelf hardware or software for which source code is not available to the designer and where changes may be introduced without notice).

Commenters generally did not question the difficulty associated with assigning values to human factor risk, and FRA's consideration of the issues as informed by intervening discussions of the Working Group (including presentation and discussion of various risk assessment topics) has done nothing to call into question FRA's original concerns regarding the complexity of safety proofs at the system level, particularly where human factors or non-conventional electronic systems are involved.

Neither did commenters effectively reassure FRA regarding the danger that risk assessment could become an ''after the fact'' justification for a system already constructed. This concern could be exacerbated by the difficulty of conducting risk assessments in parallel with product development against tight time deadlines. Under such circumstances, the tendency is to assign each subsystem of the electronic system a ''risk budget,'' after which the temptation to stay within budget could have the tendency to skew estimates. FRA has removed a sentence from the appendix on risk assessment that could be read to endorse this approach; but there is, of course, no reasonable way to prevent it from occurring. Rather, FRA will need to be alert to this procedure; and, where it is used, it may be appropriate to require a third party assessment of the verification and validation process that yielded the compliant estimates.

D. Analysis of Risk Associated With Train Control Technologies

As reported in the NPRM, recognizing the need to advance the state of the art with respect to analysis of risk specifically associated with various methods of operations and train control technologies, the Standards Task Force established a team to support development of a ASCAP. At the request of the Standards Task Force, FRA engaged the University of Virginia (UVA) to develop the ASCAP model as a risk assessment ''toolkit'' for use in implementing the PTC rule then under development. The initial challenge for the ASCAP team and contractor was to describe the level of risk associated with the current method of operation on a CSXT line, which is operated without a signal system using direct traffic control system rules (the ''base case''). The first comparison case was to be the operations on the same line should a traffic control system be installed. The second comparison case was to be implementation of the proposed Communications Based Train Management (CBTM) system, an innovative technology that addresses the PTC core functions.

As the effort progressed, the traffic control case was eliminated and the effort focused on CBTM. This ''dry run'' for ASCAP resulted in development of important elements of the technique, including a relatively sophisticated train management algorithm. The CBTM exercise was then suspended due to the need for the University to focus on the safety case for the Illinois DOT Project under contract to System Designer and Integrator for the North American Joint Positive Train Control Program (NAJPTC). When UVA last briefed the RSAC Working Group on this effort in March of 2003, it was clear that the method had been greatly enriched; however, neither the adjusted base case nor the PTC case had yet been finalized. Due to the difficulty of obtaining useful human factors data, that element of the analysis appeared to be the portion of the work still subject to review and potential redirection.

FRA reiterates that the ASCAP approach appears to have significant value for distinguishing risk between the previous condition and proposed systems. However, in developing this final rule, FRA has necessarily taken notice of the fact that constructing the method has proved much more difficult than initially predicted; and nothing approaching validation of the method has yet been undertaken. As a result, the application of recognized alternative risk assessment methods used in other industries is anticipated. These traditional methods will be accepted on a case-by-case basis, after technical review by the Associate Administrator for Safety.

E. Choice of Type of Performance Standard

FRA adopts the performance standard contained in the NPRM, which is basically that the new condition be at least as safe as the previous condition. In the preamble to the proposed rule, FRA acknowledged that this is a static level of safety.

Following issuance of the NPRM, the agency focused further on the problem of how to characterize the base case. FRA noted that, in cases where no adjustment of the previous condition was necessary, the rule might actually result in uneven outcomes depending upon the level of safety on the particular railroad and particular territory. Very often the level of safety is affected significantly by intangibles such as specific provisions of the operating rules, training, degree of supervisory oversight, and degree of professionalism of the work force. A railroad with a good safety record could, in effect, be constrained in terms of future options by its own good performance. Such a railroad would likely have a commitment to continuous improvement, and FRA did not want to create the opportunity for safety to decline. On the other side of the ledger, it is a positive thing that safety would be improved through investments in signals or train control in an area where risk had been relatively higher; however, FRA did not want to ''set the bar too high'' lest needed improvements be discouraged.

FRA embraces this concept of progressive improvement and realizes that actual safety outcomes do differ, despite every attempt to maintain minimum standards. FRA notes that, in cases where adjustment of the base case is required, reliance on average numbers for similar territory may be required, which may have the effect of leveling the playing field over time.

F. Options for Demonstrating Compliance With the Performance Standard

In the NPRM, FRA described a series of options for demonstrating compliance with the performance standard and explained that the option selected could be best described as a Bayesian belief network. A Bayesian Network is a special type of mathematical construct called an ''acyclic directed graph'' that represents relationships between logical propositions consisting of a set of assumptions called variables. A simple example of an ''acyclic directed graph'' is the elimination tree used in many sporting events. Each variable in the logical proposition is independent of other variables that it does not share a common parent with. The joint probability over all variables, which is the probability of the events represented by the graph, occurring is represented in terms of local probabilities associated with each of the individual variables. Its principal limitation is that it may not appear totally objective. It asks that the railroad demonstrate ''to a high degree of confidence,'' that the proposed product would result in no loss of safety. The railroad would be required to make this finding initially. The NPRM attempted to make it clear that, in any case where approval was required, FRA would determine the sufficiency of the safety case. However, the manner in which that would be done was not made clear, since the definition of ''high degree of confidence'' embodied a ''reasonable decision-maker'' standard that would be employed to determine compliance, and the railroad had a duty (carried forward in this final rule) to make an initial determination that the safety case was sufficient.

Since issuance of the NPRM, which pointed out the technical challenges associated with issues underlying administration of a performance standard, FRA has noted slow (albeit demonstrable) progress toward resolution of those issues. Accordingly, FRA is concerned that, given the subjectivity inherent in the ''reasonable decision maker'' finding (which would increase in proportion to the weight of the safety case derived from assumptions and judgments, as opposed to quantified empirical evidence), and given the range of decisions ''reasonable decision-makers'' might make, the proposed structure of the NPRM could prove problematic. In particular, FRA wishes to achieve consistency in outcomes for comparable Product Safety Plans (PSPs), promoting fairness for all parties and predictability in terms of what will be acceptable.

FRA notes that most PSPs will be handled in accordance with the informational filing procedures, and in that context judgments by railroads will be accepted at face value if the necessary analysis has been completed and incorporated into the PSP. However, where FRA is faced with the need to make a decision whether to approve a PSP that is taken for review—given the degree of uncertainty associated with much of the underlying analysis associated with a complex processor-based system—it is important that FRA's judgment be applied. Other provisions of the proposed rule appear to anticipate that this will be done.

Accordingly, in this final rule FRA makes clear that, in any case where approval is required, FRA will make the decision *de novo*, based upon the information provided within or accompanying the PSP and the criteria set forth in § 236.913(g). The result of this change is that any judicial review of FRA's determination would focus on whether FRA came to a result compatible with that of a reasonable decision maker with the agency's expertise and knowledge of its own requirements (by law FRA may not act in an arbitrary or capricious manner), rather than whether the railroad acted as a reasonable decision maker. In any event, given the difficulty of the underlying analysis, it is important for safety and uniformity that suppliers and railroads anticipate the need to make a persuasive case to FRA that the standard is met. FRA also clarifies § 236.909(b) with regard to the finding of sufficiency.

The primary goal of the risk assessment required by this rule is to give an objective measure of the levels of safety risk involved for comparison purposes. As such, FRA believes the focus of the risk assessment ought to be the determination of relative risk levels, rather than absolute risk levels. Thus, like the proposed rule, the final rule attempts to emphasize the determination of relative risk.

The Standards Task Force realized that risk assessments may be performed using a variety of methods, so its recommendation to the Working Group and the Working Group's recommendation to RSAC, in connection with the NPRM, proposed the creation of certain guidelines to be followed when conducting risk assessments. FRA feels that these guidelines, captured in § 236.909(e) and Appendix B, adequately state the objectives and major considerations of any risk assessment it would expect to see submitted per subpart H. FRA also feels that these guidelines allow sufficient flexibility in the conduct of risk assessments, yet provide sufficient uniformity by helping to ensure final results are presented in familiar units of measurement.

One of the major characteristics of a risk assessment is whether it is performed using qualitative methods or quantitative methods. Initially, the Standards Task Force considered proposing that only quantitative risk assessment methods be used to facilitate relative risk comparison. However, suppliers noted that certain risks, such as software coding errors, cannot be fairly or easily quantified, and that the industry practice is to assess such risks qualitatively. As suggested by RSAC at

the NPRM stage of the rulemaking process and as adopted by FRA, the final rule allows both quantitative and qualitative risk assessment methods to be used, as well as combinations of the two. FRA expects that qualitative methods should be used only where appropriate, and only when accompanied by an explanation as to why the particular risk cannot be fairly quantified. RSAC further recommended to FRA (in connection with the NPRM) that railroads/suppliers not be limited in the type of risk assessments they should be allowed to perform to demonstrate compliance with the minimum performance standard. FRA agrees with the philosophy stated here and feels that state of the art of risk assessment methods could potentially change more quickly than the regulatory process will allow, and not taking advantage of these innovations could slow the progress of implementation of safer signal and train control systems. Thus, FRA is allowing risk assessment methods not meeting the guidelines of this rule, so long as it can be demonstrated to the satisfaction of the FRA Associate Administrator for Safety that the risk assessment method used is suitable in the context of the particular product. FRA believes this determination is best left to the FRA Associate Administrator for Safety because the FRA retains authority to ultimately prevent implementation of a system whose PSP does not adequately demonstrate compliance with the performance standard under the final rule.

Regardless of the risk assessment method used, FRA prefers the same method to be used for both previous condition (base case) calculations and calculations of risk associated with the proposed product. FRA prefers similar if not identical methods to be used so that meaningful comparisons can be made. However, the final rule does not mandate that identical methods be used in every case. FRA is aware that some types of risk are more amenable to measurement by using certain methods rather than others because of the type and amount of data available. For example, in almost all situations where advanced train control technology will be economically viable, safety risk data and accident histories will often be more abundant for the previous condition than for operation with the proposed product. The latter calculation will normally be based on supplier data about the product and modeling of how it is intended to be used on the railroad. Because FRA is interested in ensuring that each relative risk determination is accurate, the final rule does not outright mandate that the same assessment method be used. If a railroad does elect to use two different risk assessment methods, FRA will consider this as a factor for PSP approval (see § 236.913(g)). Also, in such cases, when the margin of uncertainty has been inadequately described, FRA will be more likely to require an independent third party assessment (see § 236.913(h)).

VI. Proceedings to Date

On August 10, 2001, FRA published the NPRM concerning the establishment of performance standards for development and use of Processor-Based Signal and Train Control systems (66 FR 42352). As noted above, the NPRM was based on the extensive work of the Standards Task Force and additional input from the entire PTC Working Group. The recommendations of the Working Group, which included those of the Task Force, were recommended by the full RSAC to FRA. Much of the information presented here was published in the NPRM. Since most readers will not have the benefit of consulting both the NPRM and the final rule together, FRA feels that republication of pertinent background and explanatory material in one document is appropriate.

The publication of the NPRM engendered much response. FRA extended the deadline for written comments in response to specific requests for additional time, and to ensure that all commenters had an opportunity to fully develop their observations (66 FR 51362). FRA received a total of 27 comments to the NPRM which can be found in the public docket of the rulemaking. FRA did not receive a request for a hearing and did not hold a hearing.

The comments ranged from observations regarding the historical accuracy of the origin of the practices now codified at part 236 and observations concerning the RSAC process to technical commentary regarding the risk assessment methodology proposed in the rule. The Working Group met December 4–6 of 2001 in San Antonio, Texas to consider comments that had been submitted as of that date. Additional comments were received after the initial Working Group meeting and have also been addressed in this notice. Although the later comments were received long after the deadline for comment submission, FRA has attempted to address those comments, as well.

FRA found the discussions at the December 2001 meeting useful and extremely informative. Many of the commenters were present at the meeting and contributed to the discussion, of comments. Concerns raised by public comments were ultimately resolved by FRA, yet the resolutions were informed by insights obtained in the Working Group discussions. (Minutes of these discussions are in the docket of this rule.) The most challenging issues presented by commenters required additional research and analysis by FRA staff and contractors to the agency.

As noted above, the discussions at San Antonio left open the question of when and how the base case should be adjusted. This issue was pursued by a Working Group team and addressed at the Working Group meeting of July 2003. No consensus on the subject was reached at the 2003 Working Group meeting.

At the July 2003 Working Group meeting, the Working Group did achieve consensus on several recommendations for resolution of other comments on the proposed rule and reported those recommendations to the full RSAC. During August of 2003, the RSAC reviewed the written report of the Working Group and voted by mail ballot. Those recommendations were circulated to the full RSAC for mail ballot, and responses were requested by August 14, 2003. A majority of RSAC members either voted to return the recommendations to the Working Group for reconsideration or non-concurred in the recommendations. Under RSAC procedures, the effect of this vote is to conclude RSAC action on the topic without an RSAC recommendation being to FRA. (Under RSAC procedures, any vote to return consensus recommendations to the working group must be unanimous, or the vote is scored as ''non-concur.'') In any event, FRA's schedule for completion of this rulemaking could not accommodate further months of deliberation on recommendations.

FRA continued to refine the principles of this final rule in light of emerging experience with processor-based systems and risk assessment techniques until the time this final rule was submitted for review and clearance within the Executive Branch in September 2003. FRA has benefitted from the active discussion of the issues in this proceeding, including written comments and deliberations of the RSAC. Although the final resolution of the issues reflects insights gained in discussions of the Working Group and in the NPRM, FRA's final disposition of these issues is the responsibility of the agency and was based on its independent judgment.

The agency is addressing general comments in this introductory portion of the preamble to the rule. However, the majority of the comments are addressed in the section-by-section analysis of the rule text to which they apply.

VII. Comments and Conclusions on General Issues

A. Background and RSAC Process

One commenter wanted to clarify the history of the standards codified in part 236. This comment correctly identifies FRA's predecessor agency, the Interstate Commerce Commission (ICC), as having previously issued the same rules and noted that these regulations were based on the internal rules and practices of various railroads prior to World War II.

Most commenters favorably regarded the RSAC process. One comment suggested continuing the work of the RSAC by developing sample Railroad Safety Program Plans (RSPPs) and PSPs. FRA has decided to continue the work of the Working Group by involving the members in monitoring the Illinois Project and serving as a sounding board for implementation of this rule and for other PTC efforts. Although the work of the group will continue, for reasons discussed later, FRA has determined that the agency will not be involved with the creation of sample documents. A reviewed RSPP draft for the Illinois Project is already available for consideration, and RSPPs are intended to be general documents that may take a similar form on most railroads. This final rule provides a detailed outline of required PSP elements, and the wide variety of products within the scope of the rule will require a range of adaptations in the format and content of PSPs. Other comments probed the membership of the PTC Working Group and inquired about the records kept for meetings and voting. Working Group minutes after publication of the NPRM are available in the public docket. Detailed voting records indicating the way in which various parties voted are not available, since a consensus process was utilized. The Working Group and task forces operated by unanimous consensus, whereby all participants supported the recommendations of the group. This process frequently entailed the presentation of issues and vigorous debate among the four stake holder groups. In many instances, stakeholders advocated opposing views, but were persuaded to either compromise or support the opposite view to attain consensus. The minutes reflect the nature and character of the debate demonstrating various options considered and key points impacting the consensus, when consensus was achieved by the group. The consensus product was then presented to the full RSAC which had the option of accepting or rejecting the Working Group's recommendations by a majority vote. The Working Group reached consensus on the recommendations comprising the NPRM, but could not reach consensus on recommendations for the final rule. Although ballots from the full RSAC are available to the public, these typically only show support or non-concurrence for the final product, not positions on the individual issues that ultimately comprise the final rule. FRA has not kept and therefore has no avenue for providing the voting records on each issue. However, as previously noted, the text of the final rule differs in only a few major respects from the NPRM, which was based on the consensus recommendation of RSAC. In addition, FRA has attempted to note throughout the preamble issues where there were strong discussions and vigorous debate at the working group level.

B. The Performance-Based Approach

FRA has decided to pursue a performance-based standard. FRA did not receive strong comments in support of or against its decision to use a performance-based approach. Comments seem to imply a need for a performance-based approach with some prescriptive elements, in lieu of a pure performance-based approach.

C. The Performance Standard—What Will Be the ''Base Case'' for Comparison?

Among the comments on the risk assessment methodology was a filing from a noted signal expert who faulted the NPRM for, among other things, failing to recognize the capabilities of existing signal technology. The point was that it is incorrect to compare new technology with the rules for older technology (as in the proposed rule's construct for the ''previous condition''), to the extent the rules do not fully mirror that technology's inherent advantages. Rather, the commenter would have FRA recognize the actual capabilities of existing technology built to exceed existing minimum standards in terms of its actual functions. Any other course, it was implied, could lead to a reduction in safety. The commenter cited the example that cab signal systems respond to changes in track occupancy and route conditions almost immediately as an integral characteristic of their design, even though there is no explicit requirement that they do so. By contrast, communication-based technology may experience longer delays in response due to processing time and delays along the communications path. (Note: In FRA's experience, the extent of any difference in time for response to changed conditions may vary significantly from system to system, depending upon the overall architecture of the system, system priorities, communication protocols, communication capacity, and other factors.)

Taking the commenter's point, FRA posed to the Working Group the need to recognize ''best practices'' under traditional signal design principles in constructing any adjusted base case. This resulted in alarm among some members, who viewed the notion as entirely open-ended and as posing the potential that the standard embodied in the rule might become increasingly strict over time. Such a case, they noted, could discourage innovation by holding new systems to an unrealistically high standard based on the existence of little-utilized but theoretically superior technology.

FRA agrees with the commenter that the previous condition should include consideration of the actual functioning of an existing signal technology in place. Indeed, this has never been in dispute with respect to a situation in which no adjustment to the base case is required. Where adjustment to the base case is needed (the contingency most prominent in the commenter's concern), FRA again agrees that the inherent functioning of industry standard technology consistent with subparts A-G of part 236 must be considered in order to avoid the potential for a decline in the actual safety of operations subject to subpart H of part 236.

However, FRA also appreciates the concern that emerged during the December 2001 Working Group discussions that an open-ended standard is not appropriate. Accordingly, FRA wants to make clear that any adjustment should be made using signal technology that is (i) standard practice in the railroad industry (or on the particular railroad, if so desired) as of publication of this final rule and (ii) compliant with subparts A–G of part 236 as amended in this final rule. FRA will accept base case scenarios that utilize this approach, without any attempt to explore what may have been ''best practice'' from some overall industry point of view. Further, the concept of standard technology is one that will be fixed as of a date certain, so ''regulatory creep'' will not occur.

During discussions with the Working Group following the NPRM, it was clear that disagreement existed regarding how best to adjust base case scenarios to accomplish the required risk assessment. Although from time to time it appeared to FRA that differing views reflected in Working Group discussions were converging to produce a clear consensus on a recommendation addressing how to proceed, the problem persisted through the December 2001, 2002, and 2003 Working Group deliberations. Despite FRA's efforts to get full consensus on a recommended resolution to the issue of the adjusted base case, which is admittedly quite complex, the Working Group could not reach consensus on a resolution to recommend to the RSAC on the issue. The Working Group tasked the issue to a team with representation from major stakeholders who met, heard the report of a contractor employed by FRA to review and improve data flows for analysis, considered a report on risk analysis that determined the effect of speed, train density and method of operation on safety risk, and apparently reached agreement on language for approval by the full Working Group. See discussion of § 236.903(e). At the final meeting of the Working Group in July 2003, the group failed to reach consensus on the recommendation proposed by the team. FRA acknowledged the need to resolve the issue on its own. Accordingly, as further detailed in the preamble, FRA has included in the final rule language resolving the issue of ''triggers'' for adjustment of the base case. This language is substantially refined from the general concepts embodied in the NPRM and should provide very objective guidance regarding the circumstances under which the base case must be adjusted.

At the Working Group meeting in December 2001, it also became clear that the issue of train control, as opposed to signal technology, presents a special problem. The regulatory structure for train control is essentially unchanged from issuance of the ICC's RS&I in 1937. The RS&I had its roots in ICC orders beginning in 1922, and since FRA's creation in 1967, the RS&I has been carried forward in part 236.

Realistically, for operations in excess of 79 mph (see § 236.0) FRA applies the current regulations only to existing systems. Existing systems have not been extended to additional territories in part because of the costs involved. Identified safety needs have been addressed by FRA orders. For instance, following the Chase, Maryland, collision of January 4, 1987, FRA was required by law to order installation of speed control (ATC) on all freight and commuter trains operating on the Northeast Corridor (NEC), complementing the cab signal systems already in use. Section 9, Public Law 100–342; 52 FR 44510 (Nov. 19, 1987); 53 FR 1433 (Jan. 9, 1988); 53 FR 39834 (Oct. 12, 1988). As higher speed operations came to the NEC and European signal technology provided the opportunity to achieve full PTC functions, FRA required installation of the ACSES on initial territories, noting the potential for application corridor-wide at an appropriate time. 63 FR 39343 (July 22, 1998).

When Amtrak planned higher speed operations on its Michigan line, FRA supported installation of the Incremental Train Control System (ITCS), providing a limited waiver for system characteristics that differ from traditional signaling technology. ITCS provides positive stop capability as well as speed control and can be utilized to protect work zones. Although a commenter in this proceeding questioned whether ITCS provides the same level of safety as a cab-signal based system, there can be no doubt that it far exceeds the safety provided by an intermittent train stop system. In summary, while existing rules still apply to existing systems, new higher speed operations have been subjected to higher standards.

During Working Group discussions following issuance of the NPRM, FRA considered providing generic guidance for construction of adjusted base cases for PSPs involving planned speeds that exceed 79 mph. FRA further considered participating in consultation with respect to the appropriateness of alternative approaches, based upon the facts in particular cases. FRA has concluded such guidance is necessary and has provided that guidance in the final rule. Of course, FRA cannot relinquish its responsibility ultimately to determine whether the performance standard has been met. In order to provide meaningful flexibility to utilize approaches grounded in systems now in use, optimizing use of public and private resources, FRA is prepared to consider use of base cases employing cab signals and continuous train stop, where that is commercially and operationally realistic and within a reasonable speed range. FRA does not believe that the allowance in existing regulations for intermittent train stop technology would be appropriate for extension to the new performance-based rule. While that technology has an acceptable record under existing conditions of operations, it deviates from the fail-safe requirements applicable to other signal and train control systems and has clear vulnerabilities that have been realized in practice. By the same token, consideration of systems exceeding ACS/ATC is appropriate where train speeds exceed 110 mph, based on determinations FRA has made concerning the NEC, as noted above.

Accordingly, the guidance for adjustment of base cases that is set forth in § 236.909(e) of this final rule also addresses cases involving higher speed operations. In that guidance, FRA emphasizes that high speed rail passenger service should be supported by highly competent train control technology. In view of safety concerns attendant to passenger service and the fact that much of the cost of rail passenger service is met out of public sources, FRA will, where appropriate, examine new high speed passenger rail projects and propose appropriate orders setting a floor for safety for the new systems.

With respect to the base case for the NAJPTC problem, FRA indicated a willingness to make a provisional decision on revenue service for the Illinois PTC system based upon the risk assessment approach described above. Given the configuration of that system and the scope of operations involved, FRA believes that the information under development should be sufficient to permit FRA to estimate whether the PTC system is fully adequate from a safety point of view, particularly as to the fixed block operations planned for revenue service. FRA will make available funding for a required follow-on assessment, utilizing ACS/ATC as the method of operation, so that a more complete and precise record is available to guide deployment of that technology elsewhere on the national rail system. This is particularly important because the project goals include demonstration of (i) ''moving'' block operations which was not contemplated by previous rules and (ii) provisions for ''non-communicating'' (unequipped) trains, which was contemplated but not allowed by previous rules.

D. How Does This Rule Affect Locomotive Electronics and Train Control?

The earliest train control systems were electro-mechanical systems that were independent of the discrete pneumatic and mechanical control systems used by the locomotive engineer for normal throttle and braking functions. Examples of these train control systems included cab signals and ACS/ATC appliances. These systems included a separate antenna for

interfacing with the track circuit or inductive devices on the wayside. Their power supply and control logic were separate from other locomotive functions, and the cab signals were displayed from a separate special-purpose unit. Penalty brake applications by the train control system bypassed the locomotive pneumatic and mechanical control systems to directly operate a valve that accomplished a service reduction of brake pipe pressure and application of the brakes as well as reduction in locomotive tractive power. In keeping with this physical and functional separation, train control equipment on board a locomotive came under part 236, rather than the locomotive inspection requirements of part 229. Systems of this type remain in service, and FRA regulations arguably continue to require this type of functional separation in the absence of a waiver or order applicable to the particular technology (see, *e.g.*, 49 CFR §§ 236.5, 236.507, 236.516).

Nevertheless, as the price of microprocessors decreased, and their capability increased, the original equipment manufactures (OEMs) of the various components making up the locomotive and the train control systems began individually repackaging the individual components using the enhanced microprocessor capabilities and eliminating parts and system function control points access. Access to control functions became increasingly restricted to the processor interfaces using proprietary software. While this resulted in significant simplification of the previously complex discrete pneumatic and mechanical control train and locomotive control systems into fewer, more compact and reliable devices, it also eliminated many of the parallel independent control paths previously available to train and locomotive control systems. For example, in the case of pneumatic and mechanical brake system components, the introduction of electronic air brake controllers resulted in the elimination of the mechanical valve previously used for penalty brake applications by the train control system. As a result, penalty application of brakes by the once isolated, totally segregated train control systems could now only occur if the air brakes were actuated through the locomotive electronic air brake controller.

The OEMs also began tapping certain inputs or outputs of the proprietary systems of the individual components for locomotive information. Individual gages displaying operating parameters (such as speed, brake pipe pressure, and amperage) to the engineer were replaced by single integrated electronic displays. These new microprocessor controlled locomotives now respond to operator commands, display system status, and simultaneously make numerous automatic adjustments to locomotive systems to ensure efficient operation. These new locomotive electronic controls, while designed with a high degree of attention to safety, have been built to different design standards and requirements than train control systems and have thus far not been demonstrated to fail safely. In individual cases unsafe failures have occurred. In effect, electronic control of locomotive functions has arisen in recent years without the same degree of regulation as train control functions, and in some cases products have been deployed prior to a level of analysis and testing that would be considered acceptable in a train control system. As a result, locomotive engineers have expressed concern regarding the safety characteristics of certain electronic features. Despite the best efforts of OEMs and suppliers, in some cases engineers have been relegated to use of emergency brake valves in the face of blank screens and uncertain availability of normal control functions.

FRA asked for comment on this issue. GE Transportation Systems responded requesting only that train control circuitry be clearly distinguished from locomotive electronics. GM Electro-Motive (EMD) did not respond until December of 2002, long after the official close of the comment period. EMD asked that the preamble discussion on integration of functions be stricken. EMD felt that requiring isolation of train control functions could drive up costs and slow adoption of PTC. EMD noted that many of the components and subsystems required for PTC are already on board today's locomotives (*e.g.*, power supplies, GPS, displays, data radios). EMD went on to say that in-service failures should be handled in a fail-safe manner, without any operator intervention. EMD continued ''the precise mechanism for handling in-service failures is dependent upon the system architecture and must be addressed uniquely by the Product Safety Plan.'' Further, EMD suggested that ''partitioning and de-coupling strategies should be used to execute train control functions on the locomotive platform, thereby avoiding subjecting the entire locomotive electronics suite from falling within subpart H of part 236.''

Locomotive manufacturers can certainly provide secure locomotive and train controls, and it is important that they do so if locomotives are to function safely in their normal service environment. FRA highly encourages the long-term goal of common platform integration.

As noted in the NPRM, this rule is being prepared against a background of rapid and significant change in locomotive design. This change has direct implications for the future of both train control and locomotive control systems on board locomotives. The net result has been a merging of systems designed to different regulatory standards with differing levels of safety analysis at a single point.

This final rule does not preclude the integration of functions if the overall safety case is made with the required high degree of confidence. It should be noted that for new locomotives in passenger service, 49 CFR ''§ 238.105 establishes requirements for fail-safe characteristics or safety redundancy for braking and power functions that are electronically controlled. In the near future, FRA expects to explore further the need for safety criteria for critical locomotive control functions in both passenger and freight service.

VIII. Section-by-Section Analysis

Section 209.11 Request for Confidential Treatment

FRA is amending this section, as proposed in the NPRM, to clarify existing procedures for requesting confidential treatment for documents provided to the FRA in connection with the agency's enforcement activities. The Standards Task Force was concerned that confidential documents would need to be provided to FRA under parts 234 and 236, and that FRA needed to clearly indicate that it would protect such documents. The NPRM proposed to address this issue by amending paragraph (a) of § 209.11 to indicate that the procedures governing requests for confidential treatment apply to documents provided to the FRA in connection with the agency's enforcement of both the railroad safety statutes and the railroad safety implementing regulations.

FRA received several comments on this section. One commenter suggested that no information submitted to the FRA should be treated as confidential. FRA disagrees, and notes that the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905) protect confidential information from public disclosure. Another commenter suggested that FRA confirm that information will be accorded confidential treatment. FRA cannot make any flat pronouncements about the confidentiality of information

it has not yet received. However, it is likely that the type of proprietary information to be submitted in compliance with this rule may be withheld from release as a trade secret or commercial or financial information covered under exemption 4 of the FOIA. It is not the policy of FRA to publicly disseminate such information as will be submitted in compliance with this rule. Should a FOIA request be made for information submitted under this rule, the submitting company will be notified of the request in accordance with the submitter consultation provisions of the Department's FOIA regulations (§ 7.17) and will be afforded the opportunity to submit detailed written objections to the release of information protected by exemption 4 as provided for in § 7.17(a). Because there is no public disclosure requirement in this rule, there is no need at this time to substantially revise § 209.11, but FRA intends to review its confidential business information regulations in the near future.

Section 234.275 Processor-Based Systems

Section 234.275 contains standards for highway-rail grade crossing warning systems using new or novel technology or providing safety-critical data to any product governed by subpart H of part 236. Currently part 234 provides requirements for the maintenance, inspection, and testing of highway-rail grade crossing warning systems. In September 1994, FRA issued a final rule on part 234 (Grade Crossing Signal System Safety, 59 FR 50,086, Sep. 30, 1994), but the final rule did not address processor-based warning systems which are integrated with signal and train control systems. FRA felt it was necessary for these types of systems to be addressed in subpart H because of the potential for their integration or interaction with processor-based signal and train control systems. With the large number of processor-based warning systems currently installed at the nation's highway-rail grade crossings, however, it would be unrealistic to attempt to bring all of those within the scope of subpart H. The processor-based warning systems currently in use and meeting the maintenance, inspection, and testing requirements of part 234 do an admirable job of warning highway users. The Standards Task Force formed a team of its members (prior to publication of the NPRM) to identify such items as PTC system data to be transmitted to and integrated with highway traffic control/information systems (future capability). See ''Implementation of Positive Train Control Systems,'' page viii (September 8, 1999). The team's focus captured the potential uses of Intelligent Transportation System (ITS) technology at highway-rail grade crossings. This section identifies which processor-based highway-rail grade crossing warning systems are subject to the requirements of subpart H of part 236.

Paragraph (a) provides that relevant definitions of part 236, subpart H, apply to this section.

Paragraph (b) provides a standard for whether a highway-rail grade crossing warning system must meet the requirements of subpart H. ''New or novel technology'' is defined in the third sentence of the paragraph. FRA envisions new or novel technology to include such technology as that incorporated in new designs which do not use conventional track circuits. For instance, ITS contemplates intelligent controllers that utilize data provided through advanced signal and train control systems to warn motor vehicle drivers of approaching trains. FRA does not intend for new or novel technology to include any technology used in current systems (as of the effective date of this rule), which is consistent with the approach recommended by the Standards Task Force for the NPRM.

Paragraph (c) contains requirements for equipment subject to this section. These are additional requirements which must be included in the PSP.

Paragraph (d)(1) confirms that this section in no way authorizes deviation from the requirements of the Federal Highway Administration's Manual for Uniform Traffic Control Devices (MUTCD). Current ''wayside'' warning devices are standardized by the MUTCD. The MUTCD sets forth the basic principles that govern the design and usage of traffic control devices for all streets and highways open to public travel regardless of type of class or the governmental agency having jurisdiction. Part VIII of the MUTCD applies to traffic control systems for highway-rail grade crossings. Traffic control systems for such crossings include all signs, signals, markings and illumination devices along highways approaching and at crossings. Traffic control systems are required to be consistent with the design and application of the standards contained within the MUTCD.

FRA received one comment generally supporting this section. The commenter concurred with the language proposed in the NPRM for this section as necessary to ensure the safety and integrity of the system throughout its life cycle.

Section 236.0 Application, Minimum Requirements, and Penalties

As a general matter, this final rule applies to all railroads, with two exceptions. First, railroads which operate only on track that is not part of the general railroad system of transportation are excepted from all requirements of part 236. Second, rapid transit operations in an urban area which are not connected to the general railroad system of transportation are unaffected by the requirements of part 236. FRA changed this language solely to standardize the application of all of the Federal regulations related to railroad safety. For additional information on the extent and exercise of FRA's safety jurisdiction, see 49 CFR part 209 Appendix A as amended on July 10, 2000 (65 FR 42544).

FRA also added a provision noting that a person may be subject to criminal penalties for violating the provisions of 49 U.S.C. 21311. FRA has similar provisions in its other regulations requiring persons or entities to report information to FRA for safety data purposes. FRA's intention here is to emphasize the importance of truthful recordkeeping and reporting, and the possible penalties for failure to do so.

Section 236.18 Software Management Control

This section requires that all railroads adopt a software management control plan to assure that software used in processor-based signal and train control equipment in service is the version intended by the railroad to be in service at each location. Simply put, a software management control plan is an inventory of software at each equipment location. As a processor-based signal and train control system ages and experiences modifications (i.e., changing operating conditions or upgrades in hardware and software), the software management control plan should be updated accordingly, providing traceability to previous versions of software. One should always be able to determine from the software management control plan precisely what software is installed at each equipment location in the field. This requirement provides an audit trail to determine if the correct software is installed at the correct locations for all processor-based signal and train control systems on a railroad.

FRA is requiring this plan because for a considerable time after the introduction to the railroad industry of processor-based equipment in signaling systems, components of such systems were not handled responsibly. It was

not unusual for railroad employees to carry in their clothing pockets printed circuit (PC) boards and the programmable memory devices (PROMS) which plug into those boards. When troubleshooting a piece of equipment, it was common practice to simply exchange the failed PC board with ones from the selection the employee had on hand until the device appeared to function as intended. The pulled board was often saved for the purpose that it might work in another device. For this and other reasons, in the Orders of Particular Applicability for processor-based train control systems on the NEC (63 FR 39343, 52 FR 44510), PROMS were required to be soldered in place in order to assure proper software versions were installed on locomotives. FRA has addressed these practices with railroads where they have been detected, but some no doubt continue to the present day.

With the proliferation of processor-based equipment and use of PROMS with both erasable and non-erasable memory, it is no longer practical to require the soldering of PROMS on PC boards. A software management plan will track the version of software which should be and is in use at all equipment locations on a signal and train control system. Therefore, a requirement for software management control plans provides adequate assurance that processor-based equipment is programmed with the correct software version.

The inventory should identify, among other things, the software by version number. FRA expects the software management control plan to identify and document for each equipment location the executive or application software name, software version number, software revision number, date of software revision, and a description of the cyclic redundancy check for verifying PROM contents. Prior to the issuance of the NPRM, the Task Force had initially considered a requirement that railroads adopt configuration management plans for existing systems, which would cover both software and hardware dealing with safety-critical aspects of processor-based signal and train control systems. Railroads expressed concern during discussions of the Working Group that such a requirement would be unduly burdensome since there is no current configuration management requirement in place, and that certainly simple one-for-one hardware changes need not be tracked. As a practical matter, FRA envisions a limited amount of hardware tracking as a necessary element of software management, since software can reside in portable hardware elements. FRA invited comment on this issue in the NPRM and received several in favor of requiring a hardware and software management control plan. These comments expressly stated that hardware tracking is a necessary element of software management. As previously noted, the subject of configuration management was contemplated by the Standards Task Force (pre-NPRM), but the group opted to recommend to the Working Group that the tracking for existing systems be limited to a software management plan. RSAC made the sure recommendation to FRA, which FRA embodied in the NPRM. FRA has noted the concerns of commenters, but FRA agrees with the decision of the Standards Task Force, pursuant to the reasoning articulated above about the undue burden such a provision would entail, not to include hardware in the software management control plan.

There is currently no recognized industry standard for software management; however FRA is aware that other computerized systems on railroads such as accounting and communications systems use configuration management control principles. FRA believes that a requirement for software management control plans on signal and train control equipment will enhance the safety of these systems and ultimately provide other benefits to the railroad as well.

Under this section, railroads are responsible for all changes to the software configuration of their products in use, including both changes resulting from maintenance and engineering control changes, which result from manufacturer modifications to the product. In FRA's view, both of these types of changes carry significant safety implications, and should be tracked by the railroad. FRA is aware that most maintenance changes involve replacement of PC boards or software on PROMS, and that changes such as replacement of resistors on PC boards are not normally made by the railroad, but rather the product manufacturer. FRA feels that it would be appropriate for the railroad to track changes no deeper than at the PROM software levels; however, it would be unrealistic and cumbersome to expect the railroad to document changes such as replacement of resistors on PC boards.

The NPRM recognized that the proposed section imposed a strict liability standard on the railroads regardless of culpability, and that railroads may be penalized in situations where they receive inaccurate information from the product manufacturer concerning manufacturer modifications which may pose a safety risk. While railroads should be entitled to rely on the manufacturers' product information, since manufacturers obviously know much more about the specifics of their products, FRA intended to hold the railroads responsible since they are primarily responsible for the safety of their operations. On the other hand, a supplier that provide inaccurate information or provides information in an untimely way would cause the railroad to be in violation of its obligation to implement a plan that contains current and accurate information. Under § 236.0(f), any person that causes a violation of part 236 is liable for a civil penalty. With regard to PSPs, the final rule requires that the railroad disclose contractual relationships with the software supplier to ensure such timely notification of safety critical changes. See § 236.907(c)(3). Product suppliers entering into contractual arrangements for product support described in a PSP must promptly report any safety-relevant failures and previously unidentified hazards to each railroad using the product. See § 236.907(c)(4).

FRA invited comments addressing the issue of whether railroads and suppliers ought to share responsibility for the duty of maintaining proper software configuration, and if so, how such responsibility can be effectively delineated. FRA received comments suggesting that the supplier should be responsible for supplying initial software configuration information with the exception of embedded proprietary software and provide software configuration information for changes impacting safety. Another commenter provided a more detailed scenario for assigning responsibility where the suppliers providing the product directly to the railroad would be responsible for verifying the safety of the executive software and the version control of that software. The software version control would clearly identify safety related changes, required supporting hardware, and the compatible interfaces. The railroad would be responsible for maintaining version control of site specific application software for products or systems, and verify the compatibility of all component interfaces.

FRA clearly intends to hold railroads responsible as they are primarily responsible for the safety of their operations, but recognizes the extreme importance to be accorded the supplier or manufacturer. In fact, FRA acknowledged the importance of the

manufacturer's role to the process by inviting comments on the scope of a product manufacturer's duty to provide accurate information concerning initial software configuration of its products and any engineering control changes and the railroads' ability to rely on the information provided by the supplier. FRA received no comments addressing this duty of accuracy by the manufacturer. FRA did however receive a comment generally addressing inclusion of processes to ensure proper configurations. See, also, discussion of § 236.907(c)(3).

Paragraph (a) of § 236.18 discusses the application of this requirement to all railroads within 6 months of the date that the final rule is published and also discusses how it applies to railroads not in operation as of the effective date of this rule. FRA intends for this requirement to apply to all systems which would be specifically excluded by § 236.911 in subpart H. For subpart H products, configuration management for each product must be specified in the PSP and the Operations and Maintenance Manual, as required by §§ 236.907(a)(13) and 236.919(b). These specifications must comply with the railroad's RSPP.

Although the issue of allowing time for compliance was not covered by the Standards Task Force, FRA proposed a 24-month time period as sufficient. FRA sought comment on this issue and received comments both in support and against the proposed 24 months. Comments seeking more time concluded that a 24-month period may not be sufficient due to the significant impact on the development processes, documentation requirements, and product development cycle for products already being designed. The Working Group favorably discussed recommending 30 months for implementation of the software management plan following its completion. Of course, the full RSAC did not make consensus recommendations to FRA on how to resolve comments on the NPRM. Nevertheless, FRA is persuaded by the rationale suggesting the need for extension of the implementation period. FRA has decided to change the language from the NPRM to allow a longer implementation period. In essence, the change extends the previously proposed period of 24 months to 36 months, with 6 months allowed to develop and adopt the plan and 30 months allowed to implement it.

Paragraph (c) replaces the language originally proposed as paragraph (b). FRA received a comment stressing the need to revise the language to require a description of the process to ensure proper configuration in lieu of the previous language which required the identification of the actual testing procedures used to confirm proper configuration. The commenter appropriately distinguished the testing procedures which would be tailored to a particular product from the overall process which could be applied to numerous products. FRA agrees with this distinction and has incorporated the suggested change. As revised, the paragraph requires software management control plans, and further requires that the plan describe the process for identifying and confirming proper configuration when any type of change occurs.

Section 236.110 Results of Tests

FRA is modifying existing § 236.110 to include record keeping requirements for processor-based signal and train control systems under part 236, subpart H, and to make it consistent with current agency policy concerning record keeping. As modified, § 236.110 would incorporate in four paragraphs new language and language from current § 236.110.

Paragraph (a) outlines four primary changes. First, FRA is adding a new section to the list of sections to which § 236.110 applies: § 236.917(a), applies to processor-based equipment covered by subpart H. Currently, there is no established safety record or performance history for these new types of systems.

Second, paragraph (a) allows for electronic record keeping. This policy is consistent with FRA's policy of encouraging electronic record keeping. FRA is requiring that carriers adopting electronic means to record results of tests first obtain FRA's approval through an application process. Requiring FRA approval will establish a process whereby FRA can ensure all the proper information (prescribed in proposed paragraph (a)) is recorded. FRA will also be able to determine where and how the electronic records are available for inspection. FRA notes that if tests are performed by Automated Test Equipment (ATE), the test equipment shall be identified by a unique number, and the test record must reflect that number.

Third, FRA is changing § 236.110 to make clear that records filed with a railroad supervisory officer with jurisdiction are subject to inspection and replication by FRA and FRA certified state inspectors. Railroad supervisory officer is intended to mean an assistant signal supervisor, signal supervisor, or any responsible divisional officer. If a railroad receives approval for electronic record keeping, the railroad shall inform FRA how and where the electronic records will be available for inspection during normal business hours. However, in the case of life cycle records required by proposed § 236.110 (c) (1), the railroad shall inform FRA of the office location(s) where these life cycle records will be kept. If electronic record keeping (in accordance with paragraph (e)) is not used for train control test records, then these records must be kept at the locomotive office nearest the test point location(s).

Fourth, paragraph (a) corrects a misprint in current § 236.110, concerning the list of sections to which it applies. The paragraph lists in proper numerical order the sections to which § 236.110 applies.

Paragraphs (b), (c), and (d) provide requirements for how long such records specified in paragraph (a) are to be maintained. Paragraph (b) simply restates a current requirement of § 236.110 (fourth sentence).

Paragraph (c) provides a requirement specifying the length of time records made in compliance with § 236.917(a) are to be kept. Paragraph (c)(1) requires that all railroads maintain records for results of tests conducted when a processor-based signal or train control system is installed or modified. These records must be retained for the life cycle of the equipment. FRA feels tracking modifications to processor-based equipment is necessary, because such changes, especially those concerning software, are not often readily apparent, yet may lead to hazardous conditions. Whenever processor-based equipment or software is modified or revised, it must be tested to ensure it is still functioning as intended. FRA believes these records will also provide valuable information to the railroad and manufacturer pertaining to the reliability of the equipment.

Paragraph (c)(2) deals with maintenance and repair records. The NPRM proposed requiring the records to be maintained for one year, or until the next record is made. There were two reasons for this requirement. First, a subset of these records (those involving hazardous events) will be tracked in the product's hazard log (see § 236.907(a)(6)). Second, many repairs to signal and train control equipment are not performed by the railroad, but rather by contractors. It would be burdensome for repair records to be tracked by the railroad for the lifetime of the product when different contractors might be performing the actual repair work over the product's

lifetime. Thus, a requirement for lifetime record retention of test records pertaining to product repairs would be substantially duplicative and burdensome. However, FRA has noted that PSPs should address issues of railroad signal employee access to repair records and hazard logs for products used throughout the railroad, as these may contain important information for performance of their duties.

Paragraph (d) simply restates a current requirement of § 236.110 (fifth sentence).

Paragraph (e) allows electronic recordkeeping in lieu of preprinted paper forms.

Section 236.787a. Railroad

FRA inserted this definition to aid in standardizing the application provisions of its regulations.

Section 236.901 Purpose and Scope

This section describes both the purpose and the scope of subpart H.

Section 236.903 Definitions

FRA received a number of comments suggesting new definitions, as well as comments addressing various definitions included in the NPRM. Among the comments suggesting new definitions was a recommendation that the final rule include a definition for the term ''application software.'' The commenter, however, did not propose a definition for consideration by the agency. Although the comment was considered, FRA could not recommend a definition for the term that would provide clarity to the concept.

Other commenters requested the term ''train control'' be defined in the rule. FRA received two suggestions for definitions of train control. One definition stated,

> Train control means the primary system that instructs the train operator or other track occupant on speed or authority limits and/or automatically restricts the train or other vehicle to the speed or authority limit.

The other suggested definition stated,

> Train control is a part of a system interlinked from wayside to track vehicle that automatically warns and enforces against violation of track speeds and authority limits.

The underlying concern presented by these commenters is to ensure the final rule is not misconstrued to cover systems that are not train control systems. The commenters stress the distinction between systems that can initiate enforcement and actually control the train and systems that merely provide information to those individuals controlling the train. In particular, the commenters do not want train pacing systems, alerters and End of Train Devices (EOTs) considered train control systems for purposes of this rule.

FRA agrees and realizes that historically, there was an understanding among parties in the railroad industry regarding what constitutes a train control system. FRA further recognizes that evolving technology will change the nature of what is traditionally considered train control. FRA has decided that an attempt to craft a clear definition or even a laundry list of what systems or features are considered train control or components of train control systems may actually confuse the issue. Since the technology supporting these systems is continuously evolving any list would undoubtedly be outdated at its inception or shortly thereafter. The purpose and scope provision of this rule found at § 236.901 clearly limits the rules application to ''safety critical products.'' FRA believes the definition of ''safety critical'' excludes systems that merely provide information. In lieu of attempting to craft a definition of train control, FRA has clearly articulated that pacing systems, alerters, and EOTs are not train control systems, which appears to address the immediate concern of these comments. Having satisfied the immediate concerns and given the difficulty of crafting a definition, FRA has decided to leave the term ''train control'' undefined.

''Train control'' is, among other things, a statutory term; and FRA is keenly aware that evolving electronic architectures will present a variety of questions with respect to the applicability of subpart H. FRA believes these challenges should be considered on their merits, rather than through adoption in the present proceeding of a definition that is over- or under-inclusive.

In the definition of ''safety-critical,'' FRA has already said that the reach of this proceeding extends to systems that are overlaid on existing methods of operations without being integrated into those systems. Such systems monitor compliance and intervene as necessary to prevent accidents and casualties, and in the future some existing signal systems may be removed because of the safety net they will provide. Other systems providing safety-relevant information on which crews are expected to rely will also fall within this term.

In particular, FRA wishes to emphasize that systems that deliver mandatory directives in text or graphic format are also train control systems. These systems have been excepted from part 220 (Radio Communications) specifically because it was understood that special attention would need to be given to the safety and security of such systems. In light of the events of September 11, 2001, it is particularly important that oversight be provided for implementation of these systems (which FRA encourages and will seek to facilitate).

In referring to overlay systems and systems for the digital transmission of mandatory directives as train control systems, FRA recognizes the reality that both safety and operational efficiency will almost inevitably be implicated in these new technologies. Communications capability will be relied upon to move trains more efficiently, and more or less subtle changes to the underlying methods of operation will emerge. Employees will come to rely on information provided by the systems (including negative cues garnered from the lack of intervention). FRA does not object to these changes, but it is important that the changes be summed into a PSP for analysis so that pluses and minuses can be accounted for and the overall safety impact of the changes can be evaluated.

In addition to suggestions for new definitions, comments were submitted addressing various definitions proposed in the NPRM. These comments will be discussed with the corresponding explanation of each term.

The term ''component'' is intended to signify an identifiable part of a larger program or construction. A component usually provides a particular function or group of related functions. By requiring such a definition, FRA does not intend to overburden railroads or suppliers by requiring safety performance data and analysis on the least significant of these identifiable parts. Rather, FRA encourages railroads to take advantage of supplier data, which is normally readily available for off-the-shelf components. FRA assumes that railroads and suppliers will use discretion to appropriately define components at levels not quite as simple as a resistor, but also not quite so complex that they could not be readily replaced. For instance, FRA envisions components defined no more specifically than at the printed circuit board level, or E–PROM level.

FRA has added a definition of the term ''employer.'' The term employer means a railroad, or a contractor to a railroad, that directly employs or compensates individuals to perform the duties specified in § 236.921(a). This definition is needed as a result of the change in the language of § 236.921 to make clear that railroad contractors, as well as the railroads are responsible for

training their employees performing the work specified in § 236.921(a).

The term ''executive software'' is intended to encompass that software which affects the overall structure of a signal or train control system and the nature of the interfaces between its various subsystems and components. Executive software typically remains the same from installation to installation; the design is not changed and it is not recompiled. Executive software only changes when the manufacturer issues a revision or new version/upgrade.

The term ''full automatic operation'' is defined per recommendation from the Standards Task Force. This definition was crafted with respect to the railroad industry, which involves both freight and passenger operations. Other definitions come from the transit industry and involve such nuances as door control. The definition captures the notion that locomotive engineers/operators may act as both passive monitors and active controllers in an full automatic operating mode.

This rule is not designed to address all of the various safety issues which would accompany full automatic operation. Indeed, FRA would anticipate the need for further rulemaking to address the wide range of issues that would be presented should automatic operation be seriously contemplated. However, insofar as skills maintenance of the operator is concerned, the rule offers standards in § 236.927.

The term ''high degree of confidence'' was defined in the NPRM to mean ''there exists credible safety analysis which is sufficient to persuade a reasonable decision-maker that the likelihood of the proposed condition associated with the new product being less safe than the previous condition is very small (remote).'' This proposed definition was addressed by several commenters, who concluded that the term was subjective, but provided no alternative suggestion. One commenter acknowledged there is no standard that would not be subjective and noted that they could live with the inherent subjectivity of the term and concept. FRA, however, found the term's application inappropriate for subsystem and component level estimates. FRA is therefore changing the definition proposed in the NPRM to indicate that the term is to apply only at the highest level of aggregation of processor based components. FRA received one final comment addressing this term, contending the parenthetical at the end of the definition ''(remote)'' does not enhance or provide clarity to the concept. The word ''small'' is already used within the definition and needs no further explanation. In addition the word ''remote'' may actually add confusion instead of clarity as it has a specific meaning in the risk assessment area. FRA is changing the proposed definition by striking the parenthetical. Further, for reasons detailed above under the discussion of the performance standard, FRA is removing the language concerning the ''reasonable decision-maker.'' The final definition reads as follows:

High degree of confidence, as applied to the highest level of aggregation, means there exists credible safety analysis supporting the conclusion that the likelihood of the proposed condition associated with the new product being less safe than the previous condition is very small.

The term ''human factors'' refers to the limitations in human performance, abilities, and characteristics that designers should consider when designing subpart H products. FRA believes that designers can improve the safety of products by considering human factors as early as possible in the design process. Design that does not account for human factors, however, can degrade safety.

The term ''human-machine interface'' refers to the way an operator interacts with the product. FRA feels designers who incorporate human factors design principles in a human-machine interface can increase system safety and performance.

The term ''Mean Time to Hazardous Event'' (MTTHE) is used to capture the parameter widely accepted in the safety/reliability engineering discipline as a scientifically based prediction of the measure of time likely to pass before the occurrence of a hazardous event. Railroads have indicated objection to the use of the term ''average'' or ''expected'' in the definition of MTTHE. FRA invited comment on this specific issue. FRA received comments generally in favor of the use of the words ''average'' or ''expected'' in the definition. Other comments addressed the term MTTHE generally. One commenter considered the concept of a mean time to a potential hazard troublesome, arguing that if a potential hazard is recognized it should be fixed. This concern and others are not likely to be addressed by a change in the definition and will be discussed with comments on the risk assessment. Another commenter objected to the use of MTTHE as confusing when there is already a commonly used term ''Mean Time Between Hazardous Events'' (MTBHE) that captures the concept. The commenter encouraged consideration of the IEEE definition of MTBHE to prevent confusion and encourage consistency, yet seemed comfortable with the other term and expressed no objection to the use of the words ''average'' or ''expected'' as part of the MTTHE definition. FRA believes the difference between the terms MTTHE and MTBHE is minor, and renders similar if not identical numerical values. The latter implies there has been a previous hazardous event and provides an exponential number representing some unit of time (*e.g.* years or hours) before another hazardous event occurs. Similarly, MTTHE assumes that no hazardous event has occurred and provides an exponential number representing some unit of time before the first hazardous event occurs. In either case, the number represents the average time before a component, subsystem or system failure. FRA believes that it is more appropriate to use MTTHE in light of the gravity of a railroad hazardous event, which may entail consequences that include complete loss of railroad infrastructure or even human life. FRA adopted and does not intend to change the MTTHE as a pro-active measure, which does not assume repetitive hazardous events.

The term ''new or next-generation train control system'' is intended to capture the notion of a train control system utilizing a relatively new technology or new generation of technology, not currently in use in revenue service. Under this definition, a significant change in the way signal and train control systems work, such as that brought about by Locomotive Speed Limiter (LSL), could trigger classification as a new or next-generation train control system. Other factors, such as the relative maturity of the product brought to market, may be relevant to this determination.

The term ''predefined change'' is intended to signify any change likely to have an effect on the risk assessment for the product. FRA imagines that predefined changes will include: Additions, removals, or other changes in hardware, software, or firmware to safety-critical products, application software, or physical configuration description data, under circumstances capable of being anticipated when the initial PSP is developed. FRA wants to clarify that these changes would include not only changes made directly to the product, but changes in the product's use.

FRA urges parties developing PSPs to consider all likely configurations for the product, and include such considerations in the risk assessment. This will reduce the likelihood of being

required to file a PSP amendment at a later date when the railroad wishes to slightly reconfigure their product or make a slight change to it.

The term ''preliminary safety analysis'' is intended to signify the process used to develop a comprehensive listing of all safety-enhancing or safety-preserving functions which safety-critical products will perform. This listing should address the requirements currently used to provide for safety of train movements in the RS&I (part 236). It should also be consistent with those requirements derived from laws of physics, such as minimum required braking distances, and provide guidance as to how such requirements should be met. FRA received one comment indicating that the term is mistakenly listed as ''preliminary safety analysis'' in the definition section as well as in the rule text. FRA understands that the term preliminary hazard analysis is a more common term in system safety work, but the usage in § 236.905(b) connotes a much broader scope of inquiry. Accordingly, while the term is far from ideal for this application, it has been carried forward as proposed. (The term ''preliminary hazard analysis'' (PHA) refers to a discrete step in the safety assessment process (specifically verification and validation) that follows or is performed in conjunction with the initial description of system requirements and leads to the creation of a hazard log. Although the term is not used in the PSP section of the rule, a PHA will typically be performed as part of the PSP development process.)

The term ''product'' is intended to encompass all signal or train control equipment which is processor-based, including: (i) A processor-based component of a signal or train control system, and (ii) a processor-based subsystem of a signal or train control system, or (iii) the system itself, if processor-based.

The term ''safety-critical'' is intended to apply to any function or system the correct performance of which is essential to the safety of personnel and/or equipment, or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist. An example of the latter would be an ''overlay'' system that does not constitute any part of the method of operation, but maintains safe system operation should any one of the safety-critical functions be omitted or not performed correctly (*e.g.*, human error).

The term ''subsystem'' is intended to mean, for purposes of this rule, any defined portion of a system. Subsystems will normally have distinct functions, and may constitute systems themselves.

The term ''system'' is intended to mean a composite of people, procedures and equipment which are integrated to control signals or train movement within a railroad. (Adapted from Roland, Harold E. and Moriarty, Brian, ''System Safety Engineering and Management,'' Second Edition, John Wiley and Sons, Inc., 1990, p. 6.)

The term ''system safety precedence'' is intended to capture the concept of a priority of means for hazard elimination or mitigation, as stated in Military Standard 882C, ''System Safety Program Requirements'' (U.S. Department of Defense; January 18, 1993).

The term ''validation'' is slightly modified from the IEEE definition to incorporate the notion that validation procedures do not end with the end of the development cycle. Validation can be performed at any stage of a product's life cycle, including and especially after modifications are made to it. One supplier indicated that this definition ought to be modified to exclude references to what stages in a product's life-cycle validation is performed. Comments were solicited on this issue and most commenters concurred with the definition proposed in the NPRM. The dissenting commenter stressed the need to use existing definitions thereby advocating the use of the IEEE definition of validation. The commenter favors the IEEE definition because it was developed by a professional organization comprised of experts in the field, but finds nothing inherently wrong with the definition proposed by FRA. FRA notes the commenter's concern for consistency and the use of existing definitions, but is still inclined to use the definition proposed in the NPRM. Accordingly, the definition of validation does not change.

Section 236.905 Railroad Safety Program Plan (RSPP)

The system approach to safety is used pervasively in a variety of industries to reduce the risk of accidents and injuries. FRA has discussed the need for this approach to safety in three previous rulemakings: FOX High Speed Rail Safety Standards, NPRM, 62 FR 65478, (Dec. 12, 1997); Passenger Train Emergency Preparedness, final rule, 63 FR 24630, (May 4, 1998); and Passenger Equipment Safety Standards, final rule, 64 FR 25540, (May 12, 1999). System safety means the application of design, operating, technical, and management techniques and principles throughout the life cycle of a system to reduce hazards and unsafe conditions to the lowest level possible, through the most effective use of available resources. The system safety approach requires an organization to identify and evaluate safety hazards that exist in any portion of the organization's ''system,'' including those caused by interrelationships between various subsystems or components of that system. The organization then creates a plan designed to eliminate or mitigate those hazards. Where possible, the development of a system safety plan precedes the design, implementation, and operation of the system, so that potential risks are eliminated at the earliest possible opportunity. System safety plans are viewed as living documents, which should be updated as circumstances or safety priorities change or new information becomes available.

This section requires that railroads implement FRA-approved system safety plans known as Railroad Safety Program Plans (RSPP), enforce them, and update them as necessary. In this process, the railroad is required to implement their RSPP to identify and manage safety risks, and generate data for use in making safety decisions. Based on the philosophy of system safety planning, FRA believes that initiating this process prior to design and implementation of products covered by subpart H is necessary for development of safety-critical processor-based signal and train control systems.

Paragraph (a) requires the railroad to adopt an RSPP. FRA envisions that the RSPP will be a living document that evolves as new information and knowledge become available. Due to the critical role that the RSPP plays in this final rule, FRA is requiring the railroad to submit its initial plan for FRA review and approval prior to implementation of safety-critical products. Since the development of many safety-critical features in products will be guided by the RSPP, FRA believes that its review and approval is essential. FRA feels this role is a logical and necessary outgrowth of its responsibility to promulgate clear, enforceable, and effective safety standards. This paragraph also requires the railroad to submit its initial RSPP to FRA. FRA believes that the RSPP must be used as a guide in the earliest conceptual stages of a project.

FRA received general comments addressing the system safety approach suggesting that FRA provide sample documents or templates detailing format for the RSPP, as well as other documents required by the rule. FRA has decided that providing samples or

templates would not be appropriate, since the railroad's system safety approach will likely dictate the format for any documents submitted. FRA acknowledges that based on initial drafts of the RSPPs provided by various pilot projects, the document is general in nature and lacking details regarding new systems, making the Product Safety Plan (PSP) discussed below, and review of the PSP by FRA, crucial to FRA's safety enforcement role.

Paragraph (b) requires that the RSPP address minimum requirements for development of safety-critical products. It provides minimum requirements which the RSPP must address. FRA intends the plan to be a formal step-by-step process which covers: identification of all safety requirements that govern the operation of a system; evaluation of the total system to identify known or potential safety hazards that may arise over the life cycle of the system; identification of all safety issues during the design phase of the process; elimination or reduction of the risk posed by the hazards identified; resolution of safety issues presented; development of a process to track progress; and development of a program of testing and analysis to demonstrate that safety requirements are met. These minimum requirements are addressed in paragraphs (b)(1) through (b)(4).

FRA received general comments contending that much of the information requested in paragraph (b) is information that does not typically reside with the railroad but is normally information the developer or supplier maintains. The comments further explain that railroads, as the users of various systems, are not realistically expected to know the design criteria requested in paragraph (b). Although FRA understands and appreciates the commenter's concerns, FRA has decided that railroads will remain primarily responsible for providing the requested information, as railroads have the primary responsibility for the safety of their operations. Railroads should make the necessary arrangements to ensure this information is readily available from the supplier for submission to the agency.

Paragraph (b)(1) requires that the RSPP provide a detailed description of the tasks to be completed during the preliminary hazard analysis for every safety-critical product developed for use on the railroad. Paragraphs (b)(1)(i) through (b)(1)(iv) list several types of tasks which must be included in the RSPP. Railroads have indicated that requirement (iv), the identification of the safety assessment process, appears to duplicate (ii), the complete description of risk assessment procedures. FRA intends the risk assessment to be a measurement tool, used to benchmark safety levels and hopefully to provide valuable safety insight to designers. FRA views the safety assessment process as a more comprehensive process in which safety concerns are effectively identified and addressed at all stages of product development.

FRA sought comment on the railroads' claim and FRA's distinction. FRA received several comments concluding that the two concepts were confusing, as presented. One comment proposed language to further clarify the distinction. The commenter proposed that (b)(ii) be revised to read, ''A complete description of risk assessment procedures used to benchmark safety/risk levels.'' The commenter offered a revision of (b)(iv) which would read, ''The identification of the complete safety assessment process used to identify and address all safety concerns at all stages of product development.'' FRA did not find the language particularly enhancing or clarifying and has decided not to adopt the language for the final rule. Another commenter suggested that requiring a complete description of the risk assessment procedures may actually work in opposition to the goal of using the latest evaluation techniques. The commenter recommended a summary description of the risk assessment procedure which references a complete description of either a recognized standard or detailed procedure be included in the RSPP. Although FRA understands the commenter's point, FRA has decided to allow the rule text to remain the same. FRA believes the discussion noted above has served to clarify the distinction between the risk assessment and safety assessment. Although the commenters suggested the rule text was confusing, each commenter correctly described the two concepts and their differences. FRA does not believe a rule text change is necessary or helpful here.

Paragraph (b)(2) addresses how the RSPP identifies validation and verification methods for the initial design/development process and future changes, including any standards to be complied with in the validation and verification process. The objective is that a railroad create and maintain documentation which will facilitate an independent third party assessment, if required (see § 236.915(h)). FRA believes this process will also help to refine and standardize validation and verification processes for each railroad. FRA received one comment addressing this paragraph. The commenter suggested that an internal supplier's standards and procedures related to design verification and validation be exempt from this requirement. FRA believes that the approving agency, as well as a third party reviewer may have a need to see the actual standard. FRA has decided to make a slight change in the rule text to accommodate the commenter's concern. The last sentence of paragraph (b)(2) is revised to read, ''The RSPP must require that references to any non-published standards be included in the PSP.'' This change allows FRA the flexibility to require the supplier to provide a copy of the standard if necessary.

Paragraph (b)(3) requires that the RSPP contain a description of the process used during product development to identify and consider the human-machine interfaces (HMIs) which affect safety. The requirements set forth in this paragraph and in Appendix E attempt to mandate design consideration of, among other concerns, sound ergonomic design practices for cab layout in order to minimize the risk of human error, attention loss, and operator fatigue. FRA believes it is necessary for railroads/product manufacturers to be able to demonstrate how their human factors design requirements are developed and that they are developed at an early stage in the product development process.

Paragraph (b)(4) explains how the RSPP identifies configuration management requirements for products subject to subpart H. FRA believes that this requirement is necessary to help railroads maintain consistency in the configuration management of the products they use.

Paragraph (c) describes the initial review and approval procedures FRA will utilize when considering each railroad's RSPP. Paragraph (c)(1) indicates that the petition must be delivered to the Associate Administrator for Safety, for his or her respective action. Paragraph (c)(2) establishes the timing of the petition process. FRA normally responds in some fashion within 180 days with one of the responses listed (granting the petition, denying the petition, or requesting additional information). However, there may be circumstances in which FRA is unable to respond as planned. Consequently, paragraph (c)(3) indicates that inaction by FRA within the 180-day period means the petition will remain pending. The petition is not approved until the railroad receives an affirmative grant from FRA.

FRA invited and received comments addressing FRA's handling of RSPP petitions beyond 180 days after filing.

Commenters expressed concern that FRA will delay their implementation process, by allowing petitions to remain pending. In addition, commenters view this approach as a significant departure from typical approval procedures where petitions are deemed approved, unless written notification is given to the contrary. Railroads believe the delay will impact the costs of their projects. FRA does not anticipate that petition review will typically take more than 180 days. However, in the unlikely instance that the agency is unable to process petitions within the normal period of time, the agency has allowed itself an open window to address petitions with complicated or problematic issues. FRA firmly believes that its occasional need to extend the review period for petitions will not significantly delay production or impact costs greatly and has decided against changing the approval process.

Paragraph (c)(4) provides that FRA be able to reopen consideration for any previously-approved petition for cause. This will help ensure that FRA has the ability to preempt problems erupting as a result of widely disparate safety priorities being implemented throughout the industry. Commenters who expressed concerns regarding paragraph (c)(3) also expressed concerns about paragraph (c)(4), citing similar reasons. These comments contend that the ability to reopen approved petitions for further review on the basis of unspecified criteria would only further delay implementation and in some cases may actually disrupt service. FRA disagrees with this comment as well, as this measure will be used in only rare cases. FRA has imposed a requirement upon itself to provide the railroad with specific reasons for such actions. This measure requires the agency to be able to provide clearly articulated reasons, not vague concerns for reopening the petitions. As noted with paragraph (c)(3), FRA foresees reopening petitions for cause in only the most problematic cases where any delay, cost or potential disruption in service will be balanced by FRA's responsibility to ensure safety.

Paragraph (d) establishes requirements for how and when RSPPs can be modified. First, FRA believes railroads can and should modify their RSPPs at any time. However, when RSPP modifications related to safety-critical PSP requirements are involved, FRA feels its approval is necessary. Paragraph (d)(1) requires that railroads obtain FRA approval in these cases. In any other case, the railroad would be able to implement the modification without FRA approval. Paragraph (d)(2) explains that procedures for obtaining FRA approval of RSPP modifications are the same for those used to obtain initial FRA approval, with the added requirements that the petition identify the proposed modifications, the reason for the modifications, and the effect of the modifications on safety.

Section 236.907 Product Safety Plan (PSP)

This section describes the contents of the Product Safety Plan (PSP) that must be developed to govern each product. The provisions of this section require each PSP to include all the elements and practices listed in this section to assure these products are developed consistent with generally-accepted principles and risk-oriented proof of safety methods surrounding this technology. Further, each PSP must include acceptable procedures for the implementation, testing, and maintenance of the product.

FRA's existing regulations covering signal and train control systems do not include requirements of such detail since they are based on minimum design standards of long standing application that are recognized as appropriate to achieve the expected level of performance. As a result of the industry's desire to move to ''performance-based standards'' for signal and train control systems, FRA believes it is necessary to include the provisions contained in this section in order to assure safety of railroad employees, the public, and the movement of trains. In addition, FRA must ensure that key elements in the development of products correlate with the concepts of proven standards for existing signal and train control systems.

FRA sought comments on whether the elements contained in this section are adequate or whether there are other requirements that should be included to assure safety. FRA received one comment concluding that no additional requirements were necessary to ensure safety. FRA received another comment which did not explore the PSP requirements and their relationship to safety, but looked at their relationship to cost. The commenter concluded that generally, much of the information required in this section is not currently required for processor-based systems, as they are typically designed independent of railroad operational characteristics. The comment further reasoned that requiring an analysis of the system inclusive of these operating characteristics will increase the cost of development. FRA believes that suppliers and railroads will develop generic PSPs for most products that adequately address the requirements of the new subpart without substantial additional expense. It is true that the use of general purpose processors and their associated software brings about the availability of a large number of additional features and capabilities that may or may not be used in support of the primary intended function of the designer. As part of the design and evaluation process it is essential to ensure that an adequate analysis of the features and capabilities is made to minimize the possibility that conflicts may result by the use of features resulting in a software fault. Since this analysis is a normal cost of software engineering development, we do not believe it imposes a significant cost beyond what should already be done when developing safety critical software.

Paragraph (a)(1) requires that the PSP include system specifications that describe the overall product and identify each component and its physical relationship in the system. FRA will not dictate a specific product architecture but will examine each to fully understand how various parts relate to one another within a system. Safety-critical functions in particular will be reviewed to determine whether they are designed on the fail-safe principle. FRA believes this provision is an important element that can be applied to determine whether safety is maximized and maintainability can be achieved. During early discussions, prior to publication of the NPRM, concern emerged regarding the level of detail required in describing the product. FRA requested but received no comments on this issue. Accordingly, the rule language will remain the same.

Paragraph (a)(2) requires a description of the operation where the product will be used. FRA is essentially attempting to determine the type of operation on which the product is designed to be used. One signal system supplier noted that this paragraph may not be applicable to products which are independent of some or all of the railroad operation characteristics described in this paragraph. FRA requested comment on this issue and one commenter gave an example of a product where one (or potentially several) of the operational characteristics would not apply. The example cited was an interlocking controller where gross tonnage would not be relevant. In this instance, FRA would expect a short statement indicating which operational characteristics did not apply and why they were not applicable.

Paragraph (a)(3) requires the PSP to include a concepts of operations

document containing a description of the product functional characteristics and how various components within the system are controlled. FRA believes that this provision along with that contained in paragraph (a)(1) above will assist in a thorough understanding of the product. FRA will use this information to review the product for completeness of design for safety by comparing the functionalities with those contained in standards for existing signal and train control systems. While FRA will not prescribe standards for product design, FRA will require that the applicant compare the concepts contained in existing standards to the operational concepts, functionalities, and control contemplated for the product. For example, FRA requirements prescribe that where a track relay is de-energized, a switch or derail is improperly lined, a rail is removed, or a control circuit is opened, each signal governing movements into a block occupied by a train, locomotive, or car must display its most restrictive aspect for the safety of train operations. FRA intends to apply the same concept, among others, when reviewing PSPs to assure such minimum safety requirements exist.

Paragraph (a)(4) requires that the PSP include a safety requirements document that identifies and describes each safety-critical function of the product. FRA intends to use this information to determine that appropriate safety concepts have been incorporated into the proposed product. For example, existing regulations require that when a route has been cleared for a train movement it cannot be changed until the governing signal has been caused to display its most restrictive indication and a predetermined time interval has expired where time locking is used or where a train is in approach to the location where approach locking is used. FRA will apply this concept, among others, to determine whether all the safety-critical functions are included. Where such functionalities are not clearly determined to exist as a result of technology development, FRA will expect the reasoning to be stated and a justification provided describing how that technology provides equivalent or greater safety. Where FRA identifies a void in safety-critical functions, FRA will expect remedial action prior to use of the system. FRA received no comments specifically addressing the adequacy of this process for preserving railroad safety and has not changed the rule text.

Paragraph (a)(5) requires the PSP to contain a document demonstrating that the product architecture satisfies the safety requirements. The product architecture is expected to cover both hardware and software aspects which identify the protection developed against random hardware faults and systematic errors. Further, the document should identify the extent to which the architecture is fault tolerant. This provision may be included in the requirements of paragraph (a)(1).

Paragraph (a)(6) requires that a hazard log be included in the PSP. This log consists of a comprehensive description of all hazards to be addressed during the life-cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence). The hazard log addresses safety-relevant hazards, or incidents/failures which affect the safety and risk assumptions of the product. Safety-relevant hazards include events such as false proceed signal indications and false restrictive signal indications. If false restrictive signal indications happen with any type of frequency, they could cause train crew members or other users (roadway workers, dispatchers, etc.) to develop a lackadaisical attitude towards complying with signal indications or instructions from the product, creating human factors problems. Incidents in which stop indications are inappropriately displayed may also necessitate sudden brake applications that may involve risk of derailment due to in-train forces. Other unsafe or wrong-side failures which affect the safety of the product will be recorded on the hazard log. The intent of this paragraph is to identify all possible safety-relevant hazards which would have a negative effect on the safety of the product. Right-side failures, or product failures which have no adverse effect on the safety of the product (*i.e.*, do not result in a hazard) would not be required to be recorded on the hazard log.

FRA received a comment suggesting that FRA's reference to threshold limits in the hazard log is essentially the same as quantitative risk assessment. This commenter recommended use of the MIIL–STD–882 classifications. This issue was addressed in discussions at the San Antonio meeting of the Working Group. Opposition to the use of the MIL–STD–882 was articulated, as well as concern that the comment was not really applicable to the section. FRA has decided that the MIL–STD–882 is not appropriate here and accordingly, the text will remain the same.

Paragraph (a)(7) requires that a risk assessment be included in the PSP. FRA will use this information as a basis to confirm compliance with the minimum performance standard.

Paragraph (a)(8) requires that a hazard mitigation analysis be included in the PSP. The hazard mitigation analysis must identify the techniques used to investigate the consequences of various hazards and list all hazards addressed in the system hardware and software including failure mode, possible cause, effect of failure, and remedial actions. A safety-critical system must satisfy certain specific safety requirements. Leveson, Nancy G., ''Safeware: System Safety and Computers,'' Addison-Wesley Publishing Company, 1995. To determine if these requirements are satisfied, the safety assessor must review and assess the results of the following tasks:

1. Hazards associated with the system have been comprehensively identified.
2. Hazards have been appropriately categorized according to risk (likelihood and severity).
3. Appropriate techniques for mitigating the hazards have been identified.
4. Hazard mitigation techniques have been effectively applied.

FRA does not expect that the safety assessment will prove that a product is absolutely safe. However, the safety assessment should provide evidence that risks associated with the product have been carefully considered and that steps have been taken to eliminate or mitigate them. Hazards associated with product use need to be identified, with particular focus on those hazards found to have significant safety effects. Then, the designer must take steps to remove them or mitigate their effects. Hazard analysis methods are employed to identify, eliminate and mitigate hazards. Under certain circumstances, these methods will be required to be reviewed by an independent third party for FRA approval.

FRA received a general comment indicating that the requirements of paragraphs (a)(6) and (a)(8) should be combined and required as one document. The concern presented here is similar to one echoed in several comments regarding the format for both the RSPP and PSP. Some comments requested sample documents to be used as templates by the railroads. FRA is not dictating the format in which the information should be submitted, as the variation in railroad and product will likely drive the outcome of the document. However, FRA believes that documents submitted for the North American Joint PTC Illinois project can be looked to as examples, but are not intended to be a template for submissions. FRA believes the issue of combining the requirements of

paragraphs (a)(6) and (a)(8) into one document is one of format and should be resolved by the submitting railroad. Submissions for the Illinois project can be consulted for examples.

Paragraph (a)(9) also requires that the PSP address safety verification and validation procedures. FRA believes verification and validation for safety are vital parts of the development of products. Verification and validation requires forward planning and, consequently, the PSP should identify the test planning at each stage of development and the levels of rigor applied during the testing process. FRA will use this information to assure the adequacy and coverage of the tests are appropriate.

Paragraph (a)(10) requires the PSP to include the results of the safety assessment process by analysis that identifies each potential hazard and an evaluation of the events leading to the hazard; identification of safety-critical subsystems; the safety integrity level of each safety-critical subsystem; design of each safety-critical subsystem; results of a safety integrity analysis to assess the safety integrity level achieved by the safety-critical subsystems; and ensure from the analysis that the safety integrity levels have been achieved. FRA expects the safety assessment process to be clearly stated and thorough according to the complexity of the product. FRA realizes that paragraphs (a)(9) and (a)(10) may overlap in terms of requirements, and considered consolidation of the concepts required in these two paragraphs. FRA decided to leave the rule language unchanged. The agency has an expectation of some repetition in the railroad's submissions.

Paragraph (a)(11) requires a human factors analysis which addresses all human-machine interfaces (HMI's) and all product functions to be performed by humans to enhance or preserve safety. FRA expects this analysis to place special emphasis on human factors coverage of safety-critical hazards including the consequences of human failure to perform. Each HMI is to be addressed including the basis of assumptions used for selecting each such interface, its effect upon safety and identification of potential hazards associated with each interface. Where more than one employee is expected to perform duties dependent upon the output of, or input to, the HMI, the analysis must address the consequences of human failure to perform singly or in multiple. FRA uses this information to determine the HMI's effect upon the safety of railroad operations. The human factors analysis must address all criteria listed in Appendix E, unless approval is obtained from the Associate Administrator for Safety to use other equally suitable criteria. FRA believes that designers must have this flexibility.

Paragraph (a)(12) requires the railroad to include in its PSP the training, qualification, and designation program for workers whether or not railroad employees who will perform inspection, testing, and maintenance tasks involving the product. FRA believes many benefits accrue from the investment in comprehensive training programs which, among other things, are fundamental to creating a safe workforce. Effective training programs can result in fewer instances of human casualties and defective equipment, leading to increased operating efficiencies, less troubleshooting, and decreased costs. FRA expects any training program to include employees, supervisors and contractors engaged in railroad operations, installation, repair, modification, testing, or maintenance of equipment and structures associated with the product.

Paragraph (a)(13) requires the PSP to identify specific procedures and test equipment necessary to ensure the safe operation, installation, repair, modification and testing of the product. Requirements for operation of the system must be succinct in every respect. The procedures must be specific about the methodology to be employed for each test to be performed that is required for installation, repair, or modification including documenting the results thereof. FRA will review and compare the repair and test procedures for adequacy against existing similar requirements prescribed for signal and train control systems. FRA will use this information to ascertain whether the product will be properly installed, maintained, and tested.

Paragraph (a)(14) provides that products may be so designed that existing requirements contained in part 236, subparts A, B, C, D, E, and F are not applicable. In this event, the PSP must identify each pertinent requirement considered to be inapplicable, fully describe the alternative method used that equates to that requirement and explain how the alternative method fulfills or exceeds the provisions of the requirement. FRA notes that certain sections of part 236 may always be applicable to subpart H products. For example, § 236.0 prescribes, among other requirements, the conditions and speeds for which block signal systems and automatic cab signal, train stop, and train control systems must be installed. These are benchmark safety levels related to operational considerations against which the safety performance of innovative newer systems will be compared. Further, FRA will determine whether the product fully embodies the concepts of proven standards for existing signal and train control systems, as captured by subparts A–G of part 236.

Paragraph (a)(15) requires the PSP to include a description of the security measures necessary to meet the specifications for each product. Security is an important element in the design and development of products and covers issues such as developing measures to prevent hackers from gaining access to software and developing measures to preclude sudden system shutdown. The description should identify the formal method used in development of the system software, identify each hazard and its consequence in event of failure that was mitigated by using the formal method, and indicate the results of the formal proofs of correctness of the design. Where two or more subsystems or components within a system have differing specifications, the description should address the safety measures for each subsystem or component and how the correctness of the relationships between the different specifications was verified. Where two formal methods are used in developing safety-critical software from the same specification, the description should explain why the more rigorous method was not used throughout development process and the effect on the design and implementation.

FRA received several comments on paragraph (a)(15), including one that suggested refining the concept of ''security measures.'' FRA is reluctant to modify the text or refine the concept, as FRA is concerned about all dimensions of security.

Paragraph (a)(16) requires warnings to ensure safety is addressed in the Operations and Maintenance Manual and warning labels placed on the equipment of each product as necessary. Such warnings include, but are not limited to, means to prevent unauthorized access to the system; warnings of electrical shock hazards; cautionary notices about improper usage, testing or operation; and configuration management of memory and databases. The PSP should provide an explanation justifying each such warning and an explanation of why there are no alternatives that would mitigate or eliminate the hazard for which the warning is placed.

Paragraph (a)(17) requires the railroad to develop comprehensive plans and

procedures for product implementation. Implementation (validation or cutover) procedures must be prepared in detail and identify the processes necessary to verify the product is properly installed and documented, including measures to provide for the safety of train operations during installation. FRA will use this information to ascertain the product will be properly installed, maintained, and tested.

Paragraph (a)(18)(i) requires the railroad to provide a complete description of the particulars concerning measures required to assure products, once implemented, continue to provide the expected safety level without degradation or variation over their life cycles. The measures must be specific regarding prescribed intervals and criteria for testing; scheduled preventive maintenance requirements; procedures for configuration management; and procedures for modifications, repair, replacement and adjustment of equipment. FRA intends to use this information, among other data, to monitor the product to assure it continues to function as intended.

Paragraph (a)(18)(ii) provides a PSP requirement to include a description of each record concerning safe operation. Recordkeeping requirements for each product are discussed in § 236.917.

Paragraph (a)(19) requires that the PSP include a description of all backup methods of operation and safety critical assumptions regarding availability of the product. FRA believes this information is essential for making determinations about the safety of a product and both the immediate and long-term effect of its failure. Railroads have indicated concern that product availability is not in itself a safety function, and that therefore this requirement may be too broad. FRA has contended that availability is directly related to safety to the extent the backup means of controlling operations involves greater risk (either inherently or because it is infrequently practiced). FRA invited comment on this issue but received none.

Paragraph (a)(20) requires that the PSP include a complete description of all incremental and predefined changes.

Paragraph (b) addresses predefined changes. PSPs must identify the various configurable applications of the product, since this rule mandates use of the product only in the manner described in its PSP (see § 236.915(d)). FRA recognizes that railroads' rights-of-way vary with regard to the number of tracks and layouts of interlockings, junctions and stations over which train movements are made at various speeds and density. Products may contain identical subsystems or components having configurable features to provide the capability of controlling a variety of track layout schemes. The PSP must clearly set forth those attributes in such equipment that may be employed or expunged without degradation or variation of safety over the life cycle of the system, as well as the impact such changes may have in the risk assessment. Satisfaction of the minimum performance standard must be demonstrated for each predefined change. Also, the PSP must fully describe the procedures to be followed for each change and the inspections and tests necessary to assure the system functions as intended.

Paragraph (c) addresses incremental and maintenance changes and changes classified as safety-critical software upgrades, patches, or revisions. The term ''incremental change'' is intended to capture the concept of planned version changes to a product, usually software-type changes. FRA believes these changes will be necessary in order for products to acquire capabilities to perform added functions as safety requirements change. The goal of this paragraph is to encourage as many subsequent product modifications as possible to be considered by initial designers during the product development stage, in order to avoid, to the extent possible, changes made by persons with no link to initial safety design considerations.

The NPRM recognized that hardware and software suppliers were in the best position to know about problems with the products used by the railroads. Commenters indicated that much of the information generally needed for compliance with this rule typically resides with the supplier. Suppliers will likely have information regarding problems with their products. Given the importance of proper configuration management in safety critical systems, FRA believes it is essential that railroads learn of and take appropriate action to address all safety critical software upgrades, patches or revisions for their processor-based system, subsystem, or component, whether or not the railroads have experienced a failure of their system, subsystem, or component. At the same time, FRA recognizes the complexity of the electronics market. Some software will be provided by non-railroad suppliers, often embedded in hardware. Other software may be imported from non-railroad applications; and neither the railroad nor the system integrator (supplier to the railroad) may have access to all information regarding coding errors or hardware failures. Business failures will occur, and competent supply houses may lose their technical edge over time.

FRA seeks to encourage commercial relationships that will contribute to product support over the long term; however, what is perhaps more critical to FRA's oversight role is obtaining a clear understanding of the robustness of the information network available to the railroad for life cycle product maintenance and thus of the residual risk associated with any gaps in that network.

Accordingly, FRA is responding to such comments in the area of configuration management by adding text to the rule requiring railroads disclose arrangements with their suppliers for product support, which would typically include immediate notification of all safety critical software upgrades, patches, or revisions for their processor-based system, subsystem, or component. FRA will be looking for evidence of this arrangement between railroad and supplier in its review in accordance with § 236.909(b). Failure to have such an agreement with a supplier will likely impact FRA's determination with a high degree of confidence that introduction of the new system will not result in a degradation of safety.

Upon such notification and provision of software changes, the upgrade, patch, or revision must be installed without undue delay. Until the software upgrade, patch, or revision has been installed, a railroad must treat the product as if a safety critical hazard exists and take the appropriate action specified in the PSP and by the supplier. FRA believes this is necessary to ensure that any component changes that, if left uncorrected would increase risk or interfere with the safety of train operations, are promptly addressed and that a common safety baseline is maintained.

In particular, FRA believes it is the responsibility of the railroads to either develop a mutually acceptable external contractual relationship with software developers capable of providing the required timely software support or to demonstrate they have in-house software development capability to provide the necessary support . FRA would expect that this support would include providing the necessary safety software upgrade, patch or revisions after determination of a need, identification of the specific product and software version involved, the nature of the risk, any recommended mitigation pending assurance of the corrected software, and any necessary regression testing. Lack of such a fundamental life cycle software support

capability would call into question the long term suitability of the software for safety critical operations. Similar concerns apply to specialized hardware.

The final rule requires railroads to disclose these relationships. FRA intends to look for these relationships in its PSP reviews. FRA will intervene in accordance with § 236.913(g)(5) by reopening consideration of a PSP petition for cause, if there is a breakdown in communications that could adversely affect public safety. FRA will attempt to facilitate communications between the parties involved prior to formally reopening review. In the event that the need for a modification to safety critical software is identified, and the product developer is no longer in business or is unwilling to support the product, FRA will work with the affected railroads and supplier trade organizations in determining an appropriate course of action taking into consideration the extent and severity of the situation, and the availability of the original source code.

Since not all railroads may experience the same software faults or hardware failures, the developer's software development, configuration management, and fault reporting tracking system play a crucial role in the ability of the railroad and the FRA to be able to determine and fully understand the risks and their implications. Without an effective configuration management tracking system in place it is difficult, if not impossible, to fairly evaluate risks associated with a product over the life of the product. FRA expects railroads to enter into contractual arrangements with the software suppliers to ensure that the railroad is made aware of problems occurring with the software they use.

The new language also places a direct obligation on suppliers to report safety-relevant failures, which would include ''wrong-side'' failures and failures significantly impacting on availability where the PSP indicates availability to be a material issue in the safety performance of the larger railroad system. Suppliers would take on this responsibility under contract to the railroad (as disclosed in the PSP). The provision is necessary to ensure public safety in any case where a commercial dispute (*e.g.*, over liability) might disrupt communication between a railroad and supplier.

Section 236.909 Minimum Performance Standard

FRA is issuing a substantive standard which is performance-based rather than prescriptive. In short, FRA desires to establish what level of performance must be achieved, but not how it must be achieved. The objective of the minimum performance standard FRA requires is simple: new processor-based signal and train control systems must be at least as safe as the systems they would replace. The challenge inherent in this performance-based standard is measuring performance levels. For FRA, this challenge becomes one of being able to confirm compliance.

Paragraph (a) establishes the performance standard for all products to be covered by this rule. The railroad must establish with a high degree of confidence through its safety analysis that introduction of the system will not result in a safety risk level that exceeds the level of safety risk in the previous condition. In short, the railroad must prove that safety is not degraded. This standard places the burden on the railroad to demonstrate that the safety analysis provides a high degree of confidence. Under this regulatory scheme, FRA will have access to the railroads' analyses, and will be likely to detect obvious shortcomings in them.

Paragraph (b) indicates that the FRA Associate Administrator for Safety will rely on the factors listed in § 236.913(g)(2) when assessing whether the petitioner has met the performance standard for the product through employment of sufficient safety analysis. ''FRA review of PSP'' is intended to apply to both FRA review of petitions for approval and FRA review of informational filings, which, for good cause, are treated as petitions for approval. Railroads have indicated concern that this proposal does not provide for an administrative appeals procedure. FRA believes that final agency determinations under this subpart should be made at the technical level, rather than the policy level, due to the complex and sometimes esoteric subject matter. FRA sought comment on the concern and its view and received one comment in agreement with the agency view of an administrative appeals process. FRA has not changed the rule text.

Paragraphs (c) and (d) establish standards for the scope of the risk assessment to be conducted. Unless criteria for an abbreviated risk assessment are met, a full risk assessment would be required for each product.

Paragraph (c) describes the scope for a full risk assessment. The risk assessment need only address risks relevant to safety of the product. For instance, the risk of injury due to a broken handhold on a freight car would not be affected by implementation of a new signal and train control system, and therefore need not be included in the risk assessment. However, any risk which is affected by introduction, modification, replacement or enhancement of the product must be accounted for. The standard further explains that these risks can be broken down into three categories to include: New risks, eliminated risks, and risks neither new nor eliminated whose nature (probability of occurrence or severity) has changed. FRA understands that many of the affected risks relate to very low probability events with severe consequences. These risks might be overwhelmed if analyzed in combination with other, more probable risks, which would not be affected by the change.

Paragraph (d) establishes a simpler approach to demonstrate compliance with the performance standard for less complex changes such as replacement of certain signal and train control system components. FRA is allowing this simpler approach when the type of change is sufficiently basic. This proposed class of changes is defined as one which does not introduce any new hazards into the railroad operation (that is, different from the previous method of operation) and which maintains the same (or lower) levels of risk exposure and severity for hazards associated with the previous condition. FRA felt comfortable with this distinction since no new hazards are introduced with introduction of the product, and hazards which were present in the original operation are sufficiently contained (not increased in severity or exposure thereto). An example of this type of change would be replacement of a component in a signal and train control system with a newer-generation processor-based component which performs the same function. No new hazards would likely be introduced that weren't already there, original hazards would not be subject to higher exposure, and original hazards would not be subject to an increase in severity. Unless introduction of the new product is accompanied by changes in operation, the hazards encountered by the new product (which will normally be a component of the system) would be identical in both severity and exposure.

FRA received a comment indicating that the text as drafted in the NPRM did not clearly express the concept. The proposed text stated,

> An abbreviated risk assessment demonstrates that the resulting MTTHE for the proposed product is greater than the MTTHE for the product or methods performing the same function in the previous condition.

FRA agrees with the commenter and is modifying the text to state,

> An abbreviated risk assessment supports the finding required by paragraph (a) of this section if it establishes that the resulting MTTHE for the proposed product is greater than or equal to the MTTHE for the system component or method performing the same function in the previous condition.

For changes analyzed using this simplified analysis, risk associated with operation under the new product is assumed to be proportional to its MTTHE. Therefore, changes in risk are assumed to be proportional to changes in MTTHE. This simplified approach was based on the principle that when risk severity and risk exposure remain constant, risk is directly proportional to the probability of a hazardous event occurring. This is demonstrated by the equation: $risk_h = probability_h * severity_h$. which in basic terms, states that the risk of a hazard occurring is equal to the probability of the hazard occurring multiplied by the severity of the hazard. The product's MTTHE is a convenient indication of hazard probability levels for two reasons. First, suppliers have indicated that MTTHE figures can be made readily available since they are already used by some railroad signal and train control system suppliers of off-the-shelf components used in those systems. Second, MTTHE is inversely related to the hazard probability identified in the equation above.

If in the above equation the hazard severity is kept constant, hazard probability remains directly proportional to the risk. This is true only if the exposure to the risk, which is related primarily to railroad operating practices (*i.e.*, train speeds, train volumes, utilization of product, etc.), remains the same. This way risk associated with operation under the resulting system is directly proportional to the MTTHE of the new product. This condition on risk exposure is necessary since it precludes changes in train volume or other operating practices which may affect the actual safety risk encountered.

During early Working Group discussions, prior to publication of the NPRM, suppliers requested that severity not be locked into place in order to fit into this exception, but also to allow for cases where introduction of the product may bring about a reduction in hazard severity. Although an example might be difficult to imagine, FRA is confident that in such case it is mathematically impossible for safety risk levels to increase. Under these conditions, the FRA feels that MTTHE is a sufficient indication of risk, thereby warranting a simplified risk assessment. If a more complex risk assessment is more advantageous to the supplier or railroad, the rule permits that approach.

FRA invited comments on whether this exception from the full rigors of the risk assessment is appropriate, and if not, to what extent the required analysis should become more rigorous as the complexity of the proposed system increases. FRA received one comment asking for guidance regarding the level of proof necessary to fall into this exception. Despite informative discussion on this comment, FRA could not develop language that would further clarify this point. FRA has further reviewed the language and found the requirements of paragraph (d) have sufficient detail to provide the necessary guidance. FRA has no interest in preventing use of the abbreviated risk assessment, when appropriate.

FRA has reviewed paragraph (d) in an effort to create some additional flexibility and to improve clarity. The paragraph has been revised from the NPRM to place the explanation of when an abbreviated risk assessment may be used, at the beginning. In addition, FRA also endeavored to respond to a comment from the supplier community seeking an opportunity to utilize traditional methods as an alternative approach for analysis. To address this need, a new paragraph (d)(3) has been added that permits satisfaction of the performance standard by reference to safety criteria stated in a specified industry standard recently adopted by the American Railway Engineering and Maintenance Association (AREMA). That criterion is stated in Part 17.3.5 of the AREMA Communications & Signaling Manual (AREMA Manual) and involves the application of safety principles and procedures in the design of railway signal equipment. This alternative test also requires compliance with the principles set forth in Appendix C and with two additional named AREMA standards, AREMA Manual Part 17.3.1 and AREMA Manual Part 17.3.3. These new product development standards specify a Safety Assurance Program for Electronic/Software Based Products, Practices for Hardware Analysis, and Procedures for Hazard Identification and Management. Recognition of compliance with these standards, in conjunction with the design principles set forth in Appendix C, extends the advantages of a performance-based standard to traditional signal or train control products. In the final rule, FRA incorporates the AREMA standard by reference.

The basis for this alternative standard was suggested by railroad signal suppliers, during the final Working Group discussions on recommendations for a final rule, as a means of satisfying concerns expressed in the public comments regarding the need to hold down costs of safety analysis for traditional products built on fail safe principles. Suppliers noted that great confusion and delay could result under the proposed rule should a traditional signal or train control product be offered as a replacement for a similar product. In such a case, inconsistent supplier approaches to making estimates of unsafe failures could unnecessarily complicate safety analysis. FRA agrees that introduction of new products should not be complicated by paper exercises over small differences in theoretical risk when both the new product and the product to be replaced have been engineered to strictly limit the possibility of unsafe failures.

FRA has added new language calling for adherence to safety principles set forth in Appendix C and the new AREMA standard and permits qualification of a product even if it is not possible to achieve a high degree of confidence on the evidence that the MTTHE of the proposed product is equal to or greater than the product it is replacing. Such a case could arise in a variety of circumstances. For instance, it might prove extremely difficult to establish comparability for the new product under subpart H where replacing a similar product developed under the previous rule. In another case, the safety analysis methods of two different suppliers might not permit direct comparison of the degree to which MTTHE estimates are well founded, or the very high mean time estimates of both suppliers might render largely academic any differences. Paragraph (d) provides a solution to these conundrums.

FRA also notes there are times when differences in theoretical risk, while ''large'', are of such a nature as to have no practical effect upon the situation. In many cases, changes to these risk value can be done with little impact, because the failure in question is so unlikely to occur within the life of the product. Paragraph (d)(3) is intended to provide flexibility where there is no reason to believe that differences in MTTHE estimates reflect the potential for an actual degradation of safety.

Paragraph (e) establishes general principles for the conduct of risk assessments and which methods may be used. Paragraph (e)(2) contains general criteria for each risk calculation. FRA has identified three variables which must be provided with risk calculations: accident frequency, severity, and

exposure. Traditionally, risk is defined as the expected frequency of unsafe events multiplied by the expected consequences. FRA feels that exposure should be identified because increases in risk due to increased exposure could be easily distinguished from increases in risk due solely to implementation and use of the proposed product. FRA is primarily interested in risks relevant to use of the proposed product. FRA feels it would be inconsistent policy to insist to a railroad which intends to double its traffic on one rail line that it halve its accident rate if it puts in a new signal or train control system. Conversely, FRA feels a railroad should not be allowed to implement a new signal or train control system which projects double the original accident rate on a line simply because it intends to reduce its traffic volume on that line by one half. A requirement to identify exposure will help define risks relevant to use of the proposed product.

Risk exposure may be indicated by the total number of train miles traveled per year or total passenger miles traveled per year, if passenger operations are involved. FRA believes risk to operations involving passengers is highly relevant, since advanced train control technology will most certainly find uses on such lines. NTSB has specifically recommended application of advanced train control technology to lines with passenger traffic. NTSB/Railroad Accident Report-93/01. FRA believes any change should not adversely affect the safety of passenger operations. However, a risk assessment method which does not account separately for passenger miles could, in theory, obscure an increase in risk for passengers that was offset by a reduction in freight-related damages.

In early drafts of the NPRM, FRA had proposed to the Standards Task Force that risk measurements be adjusted for exposure in units of train-miles per year, passenger-miles per year or ton-miles per year, but that the units not be mandated in the rule. Most freight railroads keep safety data in terms of train-miles, employee hours, and in some cases gross ton-miles. Since train-mile data must be reported to FRA under part 225, FRA does not believe railroads will burden themselves additionally by maintaining other data for purposes of this requirement. Passenger-miles should be readily available from entities providing the service.

The FRA sought comment on the NPRM's proposed requirement to account for exposure in the units mentioned above, specifically regarding the appropriateness of this approach and other possible approaches. FRA received comments from suppliers indicating that railroads should have more flexibility in determining what risk parameter is appropriate. The comments indicated the use of train-miles or hours should be acceptable and the use of the MIL-STD–882 should be acceptable for severity. Discussions of this comment within the Working Group left FRA satisfied that railroads who will be required to comply with this rule will be comfortable with train-miles or passenger-miles. FRA has decided to modify the risk exposure metric for passenger operations to use passenger-miles as a measure of exposure in passenger operations, but will otherwise leave the NPRM language unchanged.

Paragraph (e)(2) also covers a requirement for risk severity measurements. FRA is allowing railroads to measure risk severity either in terms of total accident costs, including property damage, injuries and fatalities, or in simpler terms of expected fatalities only. FRA allows the two alternatives in order to allow flexibility, and to permit the railroads to avoid metrics which could be misconstrued as trading dollars for lives, when in fact they would be more comprehensive in avoiding accident consequences.

FRA wishes to make clear that the sole purpose of the risk assessment in this rule is to require railroads to produce certain safety risk data which will allow the agency to make informed decisions concerning projected safety costs and benefits. FRA feels this is a necessary component of the performance standard in order for FRA to be able to effectively carry out its statutory duties as a regulatory agency. By establishing a requirement for a risk assessment, FRA does not intend to create a presumptive amount of damages for tort liability after an accident occurs. In order to help maintain the safety focus of this requirement, FRA is allowing railroads to use only predicted fatalities as the risk metric (except in the case where passenger service is provided). FRA believes that for the types of safety risks involving signal and train control, total accident costs and total fatalities correspond closely enough to allow an accurate view. Thus FRA believes that allowing the alternative measure would not change substantially the risk assessment.

Paragraph (e)(3) involves the issue of concurrent changes in railroad operations. Railroads intending to implement products covered by subpart H may intend to change operational characteristics at the same time to take advantage of the benefits of the new technology. FRA envisions increased train volumes, passenger volumes, or operating speeds, or all three, to be likely changes to accompany implementation of subpart H products. The rule requires the railroad to analyze the total change in risk, then separately identify and distinguish risk changes associated with the use of the product itself from risk changes due to changes in operating practices (*i.e.*, risk changes due to increased/decreased operating speed, etc.). FRA believes this procedure is necessary to make an accurate comparison of the relevant risks for purposes of determining compliance with the minimum performance standard in § 236.909(a).

The second sentence of paragraph (e)(3) concerns changes in operating speeds related to required signal and train control systems for passenger and freight traffic. In such case, the provisions of § 236.0 normally apply, mandating the use of certain technologies/operating methods. Thus, for changes to operating speeds, the previous condition calculation must be made according to the assumption that such systems required by § 236.0(c) (and § 236.0(d), if applicable) are in use. This requirement ensures that a minimum level of safety set by § 236.0, which otherwise normally applies, is respected and not circumvented.

In addition to including an adjustment in the previous condition to account for increases in train speeds as addressed in § 236.0, FRA also intends that even where § 236.0 would not require upgraded systems due to speed increases, an adjustment be made if necessary to take into consideration the need for fluid traffic management. For instance, if the railroad proposed to implement a non-vital overlay train control system in dark territory in connection with major projected increases in traffic, the previous condition would need to be adjusted to assume installation of a traffic control system (which, under the options available under current part 236, would be needed as a practical matter to move the increased numbers of train across the territory). This provision was offered in the proposed rule as a result of FRA's view that operations in dark territory have a much higher risk of collision than in signal territory (when normalized on a train mile basis); accordingly, it was believed that this adjustment willset the safety baseline at an appropriate level for purpose of making the necessary comparison. FRA reasoned that failure to make this adjustment within the previous

condition would at least theoretically permit a progressive worsening of the safety situation as new technology is brought on line.

During discussions at the December 2001 Working Group meeting, the concern emerged that a density-linked trigger for adjustment of the base case could inappropriately constrain the ability of railroads to manage traffic flows across their systems and respond to shipper requirements. Questions were raised concerning the empirical basis for FRA's assumption. After independent consideration of the informative discussion, FRA agreed that the issue deserved more detailed consideration.

A small team of stakeholder representatives formed by the RSAC PTC Working Group discussed the issue of adjusting the base case, working from data on the Volpe Center's rail network. Refinements to the traffic flows were required to achieve the necessary fidelity to actual conditions during the study period.

Concern was initially expressed that risk did not go up with train frequency, that instead it appears to go down, so there was not good reason to adjust the base case. FRA maintained that risk increased with train frequency. FRA also maintained that cumulative risk on a line segment was relevant to safety, and that with current technologies railroads could not move increased train densities on most lines without installing systems such as traffic control, which greatly reduce risk. As the traffic density increases the per train-mile cost of providing traffic control systems decreases. Initial discussions promoted the conclusion by some that risk did not vary by method of operation. FRA and other stakeholders agreed that for any system, the risk would tend to increase with train speed. FRA researched the issue, through the Volpe Center and other contractors. FRA presented the research to the team, which agreed on the following:

- Risk per train mile in dark territory (*i.e.* lines with no signal or train control system) is approximately 2 times the risk of other territories, Traffic Control System (TCS), Automatic Block System (ABS), and Auto.[1]
- Risk doesn't change much with increased speed or frequency in operations already using TCS, ABS and Auto.
- Risk in dark territory does increase with speed and/or frequency.
- The cost per mile of risk from positive train control preventable accidents is about 12 cents per train-mile in dark territory and is about 6 cents per train-mile elsewhere.

These facts were based only on analysis of freight operations and excluded any passenger trains or accidents from risk metrics.

(In addition, FRA notes that within dark territory risk from positive train control preventable accidents per train-mile ranges from about 9 cents per train-mile at low density, to between 15 and 18 cents per train-mile at high density.)

FRA also presented evidence that operations with more than 12 trains per day in dark territory were rare, operations with more than 16 trains per day in dark territory were extremely rare, and operations with more than 20 trains per day in dark territory were almost nonexistent. FRA believes that high volume operations in dark territory are rare because such operations are uneconomical under current regulations. FRA believes that a functioning market induces railroads to adopt signal systems, which promote safety and fluid train movement in higher volume operations, for purely business reasons, but that if the rule here were to go into effect without adjusted base case provisions, then some railroads might adopt systems which were not as safe as TCS in high volume operations, creating a market failure.[2]

Under the final rule as adopted, if the change in railroad operation were to result in crossing one of the speed thresholds in § 236.0, then the adjusted base case will be the system currently utilized under normal practice for that maximum authorized speed. For freight speeds exceeding 49 miles per hour and passenger speeds exceeding 59 miles per hour, the base case will be a traffic control system.[3]

Where speeds exceed 79 miles per hour, § 236.0 currently requires automatic cab signals, automatic train stop, or automatic train control. However, FRA has supplemented these requirements to address specific needs as previously discussed; and essentially all planning for such investments is conducted in support of high speed passenger rail service. Intermittent automatic train stop technologies are not fail safe in nature, do not function in the event of inappropriate operator acknowledgment, and do not address overspeed operation. By itself, automatic cab signaling provides only warning of signal downgrades requiring acknowledgment without enforcement; and this configuration has been determined to be inappropriate for service on the Northeast Corridor as a result of major catastrophic events. Continuous automatic train stop paired with cab signals does not provide speed control, presenting the possibility of ineffectual intervention (and at a cost for a new installation comparable to automatic train control, which does regulate speed consistent with cab signal indications). Accordingly, FRA has scaled the triggers to reflect acceptable contemporary practice. For speeds in the range of 80 to 110 miles per hour, automatic cab signals and train control will be employed for the adjusted base case.

For speeds above 110 miles per hour, FRA will determine the appropriate base case in light of the characteristics of the planned operation and service experience within the speed range. Factors that will be considered include average train speeds, mix of traffic, complexity of the operation, presence or absence of special hazards (*e.g.*, movable bridges, extreme curvature), intended curving speeds and associated cant deficiencies. In this speed range, provisions for safety must be particularly rigorous because of the highly catastrophic consequences that can occur in the case of a mishap. Application of professional judgment is necessary to discern practical responses to known hazards in such environments, and through this approach the difficulty of estimating the frequency of very rare events can be reduced (in effect closing the gap

[1] Auto was a construct which included high-performance signal systems, including automatic train stop and cab signals.

[2] We refer to a market failure when the normal functioning of the economic system does not adequately address safety without the necessity of intervention through regulation. For instance, in an environment where investments in on-board train control technology are uneven, and railroads share locomotives, no railroad may have an incentive from a safety point of view to go forward with a highly effective train control installation. Failing effective cooperation among railroads, which has thus far not materialized (even though such systems have now been under discussion for almost 20 years), railroads may be driven toward low-cost options that do not achieve a high level of safety. This can be contrasted with installation of a traffic control system, for which most of the benefits will flow to the owning railroad (but which is expensive to install on a per-mile basis).

[3] Under § 236.0, a manual block system may be used in lieu of an automatic block signal system or traffic control system; but this allowance does not reflect current safety practice and is not acceptable for further application beyond existing territory due to the absence of track circuits for broken rail detection and because of the potential for unchecked mis-communication. Current safety data indicates that an automatic block signal system supplementing verbal issuance of mandatory directives is at least as safe as traffic control, so removing that option will not disadvantage applicants; further, use of traffic control signaling is notably superior from a business point of view, as evidenced by its selection for virtually all recent signalization projects on major lines.

between differences in the base case and the new system).

As further clarification of the concept included in § 236.909(e)(3) of the NPRM, the final rule provides that the adjusted previous condition (base case) must include TCS if any change results in a volume of more than twelve trains per day, unless a specific exception applies, or an increase of more than four passenger trains per day. Volume is computed based on annual average density, so density on any given day may be considerably higher. (Accordingly, the practical implications of these density triggers for adjustment of the base case are expected to be quite limited.) FRA included a new provision which permits the railroad to demonstrate in situations where volumes will exceed 12 trains per day, but will not exceed 20, that the current method of operation is adequate for the specified volume and will not delay movement of trains nor will it unreasonably increase expenditures to expedite movement.

Questions regarding generalizing models surfaced during discussions of the risk assessment. FRA believes it is permissible to generalize a model. In reviewing a model which has been generalized, FRA will consider whether the railroad has analyzed the system where the comparison is likely to be the least favorable (*e.g.*, the new system as an overlay in dark territory, compared to that territory with TCS, if the new system is to be used to replace TCS, or where CTC might be expected), has analyzed all unique elements of the system, and has analyzed key variables, which include but are not limited to:

—Operational rules including any timetable special instructions, yard limit rules, flagging rules, to the extent they differ and are applicable to the subdivisions being considered. This is especially important when generalizing from one railroad to a second, or between subdivisions of a railroad, which incorporate different methods of operation;
—Terrain (curvature and grade);
—Radio coverage, especially if affected by different terrain;
—Number of train moves including turnaround locals and foreign traffic;
—Train weight;
—Train lengths;
—Speed;
—Complexity of Operation;
—Relevant signal and train control safety-critical appliances (*e.g.*, components and subsystems of various functional types); and
—Other conditions that relate to risk assessment, especially those that cause changes in key assumptions in the risk assessment.

In reviewing a generalized assessment FRA will consider whether the system has actually been deployed, and how well actual operating experience conforms to model predictions. FRA will give tighter scrutiny to models attempting to generalize where there is no actual operating experience, and will expect more convincing data to show with a high degree of confidence that the proposed system will be at least as safe as what it would replace.

During the discussion of the base case issue with the Working Group, post NPRM, it became evident that a significant portion of the concern with respect to triggers for adjustment of the base case had to do with the complex circumstances surrounding the transition from signal-based methods of operation to methods of operation utilizing cab displays and intervention to mitigate risk. Members of the Working Group suggested that the rule address the implications of discontinuance or material modifications of signal systems under part 235 in the final rule. FRA understood the need to address the issue and does so in a new paragraph at the end of § 236.909.

The new provision presents three situations that are foreseeable as railroads seek approval of discontinuance and material modifications under part 235 and of PSPs under the new subpart H. Section 236.911(b) provides that FRA may consolidate handing of these two proceedings. The first situation is one where the part 235 application supports a discontinuance or material modification, without regard to protections for safety in the PSP. The obvious extension of the principles developed in this rulemaking is that the previous condition would be that allowed following the grant of the discontinuance or material modification. Thus, in a typical case the railroad would have broad latitude to implement the PSP.

The second situation is one where FRA determines that the part 235 application should be denied. In that case, the previous condition would not be subject to adjustment, and the PSP would be evaluated against the actual level of safety on the territory.

The third situation is one where both outright approval and outright denial appear inappropriate given the existing situation on the territory and the pendency of the request for PSP approval. The new provision says that FRA will consider whether the proposed actions, taken as a whole, are consistent with safety and in the public interest. These are the same criteria applicable to waiver of existing FRA standards. It is possible to envisage a case where the railroad's case for discontinuance is rather strong (*e.g.*, the system is very old, costly to maintain, and the current traffic is light), but not quite sufficient to warrant granting relief. At the same time, the railroad wishes to extend an existing train control system into the territory with initial, minimal equipment on the wayside but a significant reduction in the cost of maintenance. Traffic might be projected to remain low for the foreseeable future; but the railroad might wish to ensure flexibility for future traffic growth (see § 236.907(a)(2)). In this example, the existing signal system and the new train control system (relying principally on on-board apparatus already on locomotives) might appear to provide approximately equal safety, but the degree of uncertainty associated with the analysis might prevent the FRA decision maker from having a high degree of confidence that this is the case. In this example, FRA might elect to allow the discontinuance predicated on installation of the new train control system with or without conditions (such as the requirement to monitor heavily used switches), recognizing that (i) harvesting the potential benefits of communication-based train control systems requires widespread application, and (ii) maintaining the existing system might impose an undue hardship given the available alternative. From a formal standpoint, in such a case FRA might recognize a base case slightly below the existing level of safety; however, FRA would not be required to do so. This is consistent with the broad discretion afforded to the former ICC and to FRA under the Signal Inspection Act, and subsequent codified law, to balance public interest considerations and reach practical outcomes. *See* 49 U.S.C. 20502.

Delineating more precisely what outcomes may be appropriate in such cases is not possible given the wide variety of considerations that may apply as technology and railroad operations evolve. Further, FRA policy regarding the retention of signal systems has not been, and cannot expect to be, static; rather, that policy may evolve as railroad operations evolve, operating rules are refined, related hazards are addressed (*e.g.*, broken rails), and other readily available options for risk reduction emerge and become more affordable.

Section 236.911 Exclusions

Paragraph (a) provides that the subpart does not apply to products in service as of May 6, 2005. Railroads employ numerous safety-critical products in their existing signal and train control systems. These existing systems have proven to provide a very high level of safety, reliability, and functionality. FRA believes it would be a tremendous burden on the rail industry to apply this subpart to all existing systems, which have to date proven safe.

FRA received one comment contending that existing solid state equipment should not be grandfathered. FRA disagrees with the commenter and believes the safety record of this equipment is good and does not warrant the burden necessary to essentially re-prove that it is safe.

Another commenter inquired whether products with a proven track record in the light rail or transit industry would be excluded from the new requirements. Similarly, one commenter wanted clarification that the exclusion would apply to signal and train control products in service, in freight or passenger railroad applications internationally, regardless of where in the world the products are installed.

FRA was unable to fashion an outright exclusion from subpart H requirements for equipment previously used in transit and foreign service. FRA does not have the same degree of direct access to the service history of these systems. Transit systems, except those that are connected to the general railroad system, are not directly regulated by FRA at the national level. FRA's experience with eliciting safety documentation from foreign authorities has not been good, particularly given the influence of national industrial policies.

However, FRA does believe that the potential exists for simplification of the PSP process (rather than an exclusion from the process) under which the railroad and supplier could establish safety performance at the highest level of analysis for the particular product, relying in part on experience in the other service environments and showing why similar performance should be expected in the U.S. environment. International signal suppliers should be in a good position to marshall service histories for these products and present them as part of the PSP. Whether working within subpart H or in a waiver context, the applicant(s) should address additional issues such as the following:

1. Detailed description of the change, the associated affected components, functional data flow changes, and any changes associated with safety capabilities of the product.
2. The analysis used to verify that the change did not introduce any new safety risks, or if potential risks were added, the risks and their mitigation.
3. The tests plan and associated results used to verify and validate the correct functionality of all modes of the safety-related capabilities of the product with the component refreshed.
4. Identification of any changes in training, test equipment, or maintenance required for the continued safe operation of the product.

Paragraph (b) addresses the products that are designed in accordance with part 236, subparts A through G, not in service at present but which will be in the developmental stage or completely developed prior to publication of this rule. The Standards Task Force prior to publication of the NPRM felt that these products ought to be excluded from the requirements of subpart H upon notification to FRA by 60 days after publication of the rule, if the product were placed in service by 3 years after publication of the final rule. FRA agrees that, at least for products that will be placed in service within three years of issuing this rule, it will be too costly for the railroads and suppliers to re-do work and analysis for a product on which development efforts have already begun. Similarly, it would be unfair to subject later implementations of such technology to the requirements of subpart H. In addition, FRA believes that railroads ought to be given the option to have products which are excluded made subject to subpart H by submitting a PSP and otherwise complying with subpart H. FRA has therefore adopted a provision providing this option.

Paragraph (c) addresses the exclusion of existing and future deployments of existing office systems technology. Currently, some railroads employ these dispatch systems as part of their existing signal and train control systems. These existing systems have been implemented voluntarily to enhance productivity and have proven to provide a reasonably high level of safety, reliability, and functionality. It would be a tremendous burden on the rail industry to apply subpart H to this technology and, in the case of smaller railroads, might discourage its use. The Standards Task Force recommended at the NPRM stage that a subsystem or component of an office system must comply with subpart H if it performs safety-critical functions within a new or next-generation signal and train control system. FRA agrees with this recommendation and further feels that this requirement assures the safe performance of the system.

Paragraph (d) establishes requirements for modifications of excluded products. At some point changes to excluded products qualified as significant enough to require the safety assurance processes of subpart H to be followed. This point exists when a change results in degradation of safety or in a material increase in safety-critical functionality. FRA received a comment to the NPRM inquiring whether product modifications caused by implementation details might cause products that were previously excluded from subpart H to be covered by subpart H requirements. FRA believes that modifications caused by implementation details will not necessarily cause the product to become subject to subpart H. These types of implementation modifications will be minor in nature and be the result of site specific physical constraints. FRA expects that implementation modifications that will result in a degradation of safety or a material increase in safety-critical functionality, like a change in executive software, will cause the product to be subject to subpart H and its requirements.

Paragraph (e) clarifies the application of subparts A through G to products excluded by this section.

Section 236.913 Filing and Approval

This section describes the railroad's requirements for notifying FRA of its preparation of a PSP to ensure compliance with procedures established in the RSPP and the requirements of this subpart.

Paragraph (a) establishes a requirement for preparation of a PSP for each product covered by this subpart, and discusses the circumstances under which a joint PSP must be prepared. A joint PSP must be prepared when (1) the territory on which a product covered by the subpart is normally subject to joint operations, or is operated upon by more than one railroad; and (2) the PSP involves a change in the method of operations. ''Normally subject to joint operations'' is intended to mean any territory over which trains are regularly operated by more than one railroad. FRA does not intend to require a joint PSP for territory over which trains are re-routed on an emergency basis, unless there are other, scheduled trains conducted over this territory by more than one railroad. Railroads have expressed concern that this standard may be too restrictive if it includes any territory over which more than one railroad has operating rights. However, where a railroad has operating rights over a territory where a new train control system will be installed, that

railroad's locomotives will need to be appropriately equipped or the PSP will need to show that safety is not degraded from the previous condition.

FRA invited comments specifically addressing this issue, and received comments on the subject. Commenters seemed concerned with having a clear distinction between situations where a single railroad would submit a PSP, where a joint PSP would be required, or when a PSP could be used more than once. If for example, a railroad plans to install a new signal system utilizing next-generation processor-based technology, the owning railroad alone will submit a PSP. This example assumes that other railroads using the host railroad's trackage will not need specially equipped locomotives. In situations where the host railroad's installation will require train control compatibility such as specially equipped locomotives, a joint PSP will be required.

In addition to this distinction, comments explored the concept of using the same PSP for different applications or perhaps even different railroads. The concept of having a ''portable'' PSP was actively discussed by the Working Group both before and after publication of the NPRM. FRA can foresee circumstances where the original PSP submitted has a scope sufficient to cover a new application of the product. In those instances, a railroad is invited to submit its previously approved PSP along with a cover letter delineating its new, yet comparable use. In addition to this scenario, FRA can foresee an instance where a supplier has designed a system or product under the most challenging restrictions, anticipating various operating conditions, such that the PSP could be used for different railroads. (See, also, discussion of ''generalizability,'' above.)

In paragraph (b), FRA establishes a two-tiered approach where some products require an informational filing, while others will necessitate full FRA review and approval by petition. The railroad must submit a petition for approval only when installation of new or next-generation train control systems is involved. During the course of its deliberations, prior to issuance of the NPRM, the Standards Task Force developed a matrix of railroad actions regarding processor-based signal and train control systems and the level of FRA scrutiny that ought to be required. Eventually, the group whittled this matrix down to three situations for which the railroad must petition the FRA for approval. These were: (1) Any installation of a new or next-generation train control system; (2) any replacement of an existing PTC system with a new or next-generation train control system, and (3) any replacement of an existing PTC system with an existing PTC system. All other situations would require an informational filing, subject to the procedures proposed in § 236.913(e). The Standards Task Force recommended to the Working Group at the NPRM stage that existing processor-based train control systems should be subject to the requirements of § 236.911, and the recommendation was reflected in RSAC's recommendation to FRA, so the third situation was no longer considered subject to petition procedures. Also, since the second situation is a subset of the first, only one situation remains for which a petition for FRA approval is required. FRA agrees with the RSAC recommendation and the NPRM provided, that review and approval is required for all installations involving new or next-generation train control systems; mere informational filings will not be sufficient in this case. FRA sought comments specifically addressing when petitions should be required in lieu of informational filings but no comments were submitted. The rule language remains the same. In addition, some changes requiring a PSP are most appropriately combined with modifications made in accordance with part 235. Any product change or implementation needs an informational filing at a minimum. Paragraph (b) also states that some issues may be addressed through FRA's waiver process in part 211.

Paragraph (c) specifies procedures for submitting informational filings. Informational filings are less formal and detailed than full petitions for approval, and FRA will in most instances merely audit to determine whether the railroad has followed the requirements established in subpart H and the railroad's RSPP. Since this process is expected to be less complicated and formal than a full petition for approval review, FRA anticipates being able to respond within 60 days. The railroad must identify where the PSP is physically located since FRA may want to inspect it during normal business hours. This might alleviate any FRA concerns, negating the need for treating the informational filing as a petition for approval. FRA included in the NPRM general criteria for situations in which FRA will require an informational filing to be upgraded to a full petition for approval. That criteria has been carried forward to this final rule. FRA believes these filings will be upgraded only for good cause, and gives examples of what will be considered good cause. Although FRA invited comment regarding the issue of good cause, no comments were submitted addressing the subject.

Paragraph (d) addresses requirements for petitions for approval. FRA classifies petitions for approval into two categories: those involving prior FRA consultation (covered in paragraph (d)(1)) and those that do not (covered in paragraph (d)(2)). In this rule, FRA does not require prior consultation but attempts to accommodate railroads' often tight development and implementation schedules by getting involved early. Optimally, FRA feels it should be involved at the system design review phase of development, thereby reducing the scope of FRA review which might otherwise be required. FRA believes that a railroad's failure to involve FRA early enough in the process could potentially delay FRA approval and system implementation. This rule invites the railroad to garner government involvement at an early stage in the development of a product requiring a petition for approval or a product change for which a petition for approval is required. Paragraph (d)(1) concerns petitions for approval involving prior FRA consultation. Under this procedure, FRA issues a letter of preliminary review within 60 days of receiving the Notice of Product Development. This process allows FRA to more easily reach a decision on a petition for approval within 60 days of receipt.

Paragraph (d)(2) concerns petitions for approval which do not involve prior FRA consultation. When railroads wait to involve FRA until they are approaching use of the system in revenue service, paragraph (d)(2)(iii) specifies that the agency will attempt to act on the petition within 180 days of filing. If FRA does not act on the petition within 180 days it will notify the petitioner as to why the petition remains pending. FRA believes that railroads should be encouraged to take necessary safety assurance steps to cure a petition of any apparent inadequacies before FRA requires a third party review. FRA received comments addressing the possibility of a conditional approval pending results of non-critical data inputs or in the alternative shorter FRA response periods for less complex products or changes. FRA suggests that railroads indicate a targeted date and the relevance of that date when making their filing so that FRA knows immediate action is needed. FRA will endeavor to meet requested dates, since

it is unlikely that the agency will need 180 days in all cases.

Paragraph (e)(1) establishes a role for product users in the review process. FRA believes comments from employees who will be working with products covered by this subpart will provide useful safety insight. Accordingly, FRA will consider them to the degree practicable.

Paragraph (e)(2) requires that FRA provide notice to the public of pending filings and petitions. This method of notice will allow local, national and international labor organizations to get involved with issues of interest. FRA believes that information provided by organizations whose members work directly with or will work directly with products subject to this subpart is important. FRA will consider any information it receives to the degree practicable, when involved in the review of informational filings and petitions for approval.

Paragraph (f) allows railroads to file petitions for approval prior to field testing and validation of the product. The petition for approval process must provide information necessary to allow FRA involvement in monitoring of the test program. FRA encourages railroads to avail themselves of this provision so as to provide FRA with notice of the product development earlier rather than later in the development process.

Paragraph (g) describes the approval process of a PSP. A PSP gains approval when the requirements listed in paragraph (g)(1) have been met.

Paragraph (g)(2) lists the factors which FRA will consider when evaluating the railroad's risk assessment. As the Standards Task Force toiled with this subject (pre-NPRM) it was felt that some guidance or acknowledgment of what factors would be considered by FRA during this process should be spelled out. Paragraph (g)(2)(i) explains that FRA will consider the product's compliance with recognized standards in product development. Factors such as the use of recognized standards in system design and safety analyses, accepted methods in risk estimates and proven safety records for proposed products will tend to simplify FRA's review. Paragraph (g)(2)(iii) states that FRA will consider as a factor the overall complexity and novelty of the product design. Railroads have indicated that this factor appears to be a barrier to innovation. Although FRA invited comment on this subject, no comments were submitted. Paragraph (g)(2)(vii) lists as a factor whether or not the same risk assessment method was used for both the previous condition and the risk calculation for the proposed product. FRA feels that this is important because risk assessment methods vary widely in nature. A common characteristic is their ability to describe relative differences in risk associated with changes in the environment, rather than predicting absolute values for future safety performance. However, railroads have indicated their belief that so long as the methods are acceptable to FRA, it should not matter whether a different one was used. FRA specifically sought comments addressing whether factor (vii) ought to be included as a factor either in the PSP approval decision or the decision to recommend a third-party assessment. No comments were submitted on these subjects.

Paragraph (g)(3) discusses additional factors FRA considers in its decision concerning use of the product by the railroad. Paragraph (g)(4) indicates that FRA is not limited to either granting or denying a petition for approval as is, but rather may approve it with certain conditions. Paragraph (g)(5) includes the provision that FRA be able to reopen consideration of a petition for cause and sets forth potential reasons for reopening, including such circumstances as credible allegation of error or fraud, assumptions determined to be invalid as a result of in-service experience, or one or more unsafe events calling into question the safety analysis underlying the approval.

Paragraph (h) establishes factors considered by FRA when requiring a third-party assessment and specifies who qualifies as an independent third party. FRA received a general comment suggesting that third-party assessments be required only once for each product, no matter where implemented. The answer to this question will likely be determined by whether the PSP itself has been structured to foster ''portability.''

Paragraph (h)(1) lists those factors recommended by RSAC at the NPRM stage and adopted by FRA, many of which are the same used in deciding whether to approve a PSP. This list provides guidance to product developers for criteria they would be expected to meet to avoid the prospect of a third party assessment.

Paragraph (h)(2) defines the term ''independent third party'' as initially adopted by FRA in the NPRM. FRA may maintain a roster of recognized technically competent entities, as a service to railroads selecting reviewers under this subpart. Interested parties may submit credentials to the Associate Administrator for Safety for consideration to be included in such a roster. Prior to publication of the NPRM, railroads indicated concern that the definition is unduly restrictive because it limits independent third parties to ones ''compensated by'' the railroad or an association on behalf of one or more railroads that is independent of the supplier of the product. FRA believes that requiring the railroad to compensate a third party will heighten the railroad's interest in obtaining a quality analysis and will avoid ambiguous supplier/third-party relationships that could indicate possible conflicts of interest. FRA sought comment on this subject but received none.

Paragraph (h)(3) explains that the minimum requirements of a third party audit are outlined in Appendix D and that FRA limits the scope of the assessment to areas of the safety validation and verification which deserve scrutiny. This will allow reviewers to focus on areas of greatest safety concern and eliminate any unnecessary expense to the railroad. In order to limit the number of third-party assessments, FRA first strives to inform the railroad as to what portions of a submitted PSP could be amended to avoid the necessity and expense of a third-party assessment altogether.

Paragraph (i) addresses handling of PSP amendments. The procedures which apply to notifying FRA of initial PSPs also apply to PSP amendments. However, PSP amendments may take effect immediately if they are necessary in order to mitigate risk, and if they affect the safety-critical functionality of the product. During discussions for the NPRM, the Standards Task Force recommended to the Working Group that a more informal process is warranted in order to alleviate safety concerns which are discovered after FRA is notified of the initial PSP. Discussions prior to issuance of the NPRM included consideration of a rule which would allow for all PSP amendments to be handled via informational filing; however, FRA felt that the same concerns which apply to initial filing (either as a petition or as an informational filing) should apply to the PSP amendment. No comments were submitted addressing this section and the rule remains the same.

Paragraph (j) identifies procedures for obtaining FRA approval to field test a subpart H product. FRA approval is necessary where the railroad seeks to test any product for which it would otherwise be required to seek a waiver for exemption of specific part 236 regulations. For instance, when field testing of the product will involve direct interface with train crew members, there may be a requirement for some control mechanisms to be in place. Also,

railroads will likely need to test products for operational concepts and safety-critical consideration of the product prior to implementation. This paragraph provides an alternative to the waiver process when only part 236 regulations are involved. When regulations concerning track safety, grade crossing safety, or operational rules are involved, however, this process would not be available. Such testing may also implicate other safety issues, including adequacy of warning at highway-rail crossings (including part 234 compliance), qualification of passenger equipment (part 238), sufficiency of the track structure to support higher speeds or unbalance, and a variety of other safety issues, not all of which can be anticipated in any special approval procedure. ''Clearing the railroad'' for the test train answers only a portion of these issues. Typically, waiver proceedings under part 211 allow a forum for review of all relevant issues. Based on available options, FRA would foresee the need to continue this approach in the future. FRA sought comment on its view, but no comments were submitted addressing this issue. Under this paragraph, railroads may also integrate this informational filing with the filing of a petition for approval or informational filing involving a PSP. The information required for this filing, as described in paragraphs (j)(1)–(j)(7), is necessary in order for FRA to make informed decisions regarding the safety of testing operations.

Section 236.915 Implementation and Operation

This section establishes minimum requirements, in addition to those found in the PSP, for product implementation and operation.

Paragraph (a) establishes requirements relating to when products may be implemented and used in revenue service. Paragraph (a)(1) discusses the standard for products which do not require FRA approval, but rather an informational filing. Paragraph (a)(2) addresses the standard for products which require that a petition for approval be submitted to FRA for approval. Such products shall not be used in revenue service prior to FRA approval. Paragraph (a)(3) excepts from the requirements of paragraphs (a)(1) and (a)(2) those products for which an informational filing had been filed initially, then FRA elected after implementation to treat the filing as a petition for approval. In the case where FRA chooses to treat an informational filing as a petition for approval after implementation, ''for cause'' is not intended to be restricted to the same interpretation given in § 236.913(c) for ''good cause.'' FRA envisions that cause for review after implementation will more likely be related to actual in-service performance than initial design safety considerations.

Paragraph (b) establishes a requirement that railroads will not exceed maximum volumes, speeds, or any other parameter limit provided for in the PSP. On the other hand, a PSP could be based upon speed/volume parameters that are broader than the intended initial application, so long as the full range of sensitivity analyses are included in the supporting risk assessment. FRA feels this requirement will help ensure that comprehensive product risk assessments are performed before products are implemented. This paragraph also makes allowance for amendment of PSPs even after implementation. Railroads indicated they will need the ability to amend PSPs to correct initial assumptions after implementation. Furthermore, railroads feel that if operating conditions for which a product was designed are no longer applicable and safety levels have not been reduced, the necessary corresponding PSP amendments should be allowed. FRA agrees that a mechanism must be available to handle this kind of circumstance, but of course the degree of scrutiny afforded the amendment would depend upon the specific risk profile of the proposed change.

Paragraph (c) requires that each railroad ensure the integrity of a processor-based system not be compromised, by prohibiting the normal functioning of such system to be interfered with by testing or otherwise without first taking measures to provide for the safety of train movements, roadway workers, and on-track equipment that depend on the normal functioning of the system. This provision parallels current § 236.4, which applies to all devices. By requiring this paragraph, FRA merely intends to clarify that the standard in current § 236.4 applies to subpart H products.

Paragraph (d) requires that, in the event of the failure of a component essential to the safety of a processor-based system to perform as intended, the cause be identified and corrective action taken without undue delay. The paragraph also requires that until repair is completed, the railroad be required to take appropriate measures to assure the safety of train movements, roadway workers, and on-track equipment. This requirement mirrors current requirement § 236.11, which applies to all signal system components.

Section 236.917 Retention of Records

Paragraph (a) identifies the documents and records the railroad is required to maintain at a designated office on the railroad. All documents and records must be available for FRA inspection and copying during normal business hours. The following records are required to be maintained for the life-cycle of the product. First, the railroad needs to maintain adequate documentation to demonstrate that the PSP meets the safety requirements of the RSPP and applicable standards in this subpart, including the risk assessment. The risk assessment must contain all initial assumptions for the system that are listed in paragraph (i) of Appendix B—Risk Assessment Criteria. Second, the product Operations and Maintenance Manual, as described in § 236.919, needs to be kept for the life-cycle of the product. The railroads are also required to maintain training records which designate persons who are qualified under § 236.923(b); these records will be kept until new designations are recorded or for at least one year after such person(s) leave applicable service. Paragraph (a) also requires that implementation, maintenance, inspection, and testing records as described in § 236.907(a)(18)(ii) be recorded as prescribed in § 236.110.

During Working Group discussions, railroads have indicated concerns that the product life-cycle is too long a term to keep the data proving PSP compliance with the RSPP. FRA is sympathetic to this concern but wishes to ensure that all records relevant to the current configuration and operation of the system remain available. FRA sought comments specifically concerning this issue, but received none. FRA has slightly revised the language to clarify that the timing of retention of training records is governed by § 236.923(b).

After the product is placed in service, paragraph (b) requires the railroad to maintain a database of safety-relevant hazards as described in § 236.907(a)(6), which occur or are discovered on the product. This database information shall be available for inspection and replication by FRA and FRA certified state inspectors, during normal business hours. Paragraph (b) also provides the procedure which must be followed if the frequency of occurrence for a safety-relevant hazard exceeds the threshold value provided in its PSP. This procedure involves taking immediate steps to reduce the frequency of the hazard and report the hazard occurrence to FRA. FRA realizes the scope and

difficulty of undertaking these actions could vary dramatically. In some cases, an adequate response could be completed within days. In other cases the total response could take years, even with prompt, deliberate action. If the action were to take a significant time, FRA would expect the railroad to make progress reports to FRA.

The reporting requirement of § 236.917(b) is not intended to excuse lack of compliance with current reporting requirements of part 233. In the case of a false proceed signal indication, FRA would not expect the railroad to wait for the frequency of such occurrences to exceed the threshold reporting level assigned in the hazard log. Rather, current § 233.7 requires *all* such instances to be reported.

FRA notes that the Standards Task Force recommended to the Working Group and FRA agreed that railroads take prompt countermeasures to reduce only the frequency of the safety-relevant hazard; this recommendation was incorporated in RSAC's recommendation to FRA in the NPRM. There may be situations where reducing the severity of such hazards will suffice for an equivalent reduction in risk. For example, reducing operating speed may not reduce the frequency of certain hazards involving safety-critical products, but it would in most cases reduce the severity of such hazards. FRA invited comments specifically addressing this issue, and received a comment suggesting that the rule retain its flexibility in risk management methodology. Another comment contended that severity may be hard to predict, since there will likely not be enough incidents to make an accurate prediction based on an average. The commenter agreed with FRA that there may be instances where severity in any given incident may be higher than expected. The rule is unchanged from the NPRM.

During Working Group discussions (pre-NPRM) the concern emerged that 15 days is not enough time to be held to report any inconsistency to FRA, especially when traditional postal service is used to deliver the report. As such, railroads proposed that they be given 30 days to report any inconsistencies. The NPRM permitted railroads to fax or e-mail reports of inconsistencies, which would relieve concerns about traditional postal service. FRA currently allows faxing or e-mailing of reports required by §§ 233.7 and 234.9, involving signal failure and grade crossing signal system failure, respectively. Commenters were invited to address this issue, and FRA received one comment concluding that 15 days is sufficient. FRA has amended the rule text to explicitly provide for reporting in writing by mail, facsimile, e-mail, messenger, or hand delivery. Documents that are hand delivered to FRA must not be enclosed in an envelope, as all envelopes are required to be routed through the DOT mail room.

Section 236.919 Operations and Maintenance Manual

This section requires that each railroad develop a manual covering the requirements for the installation, periodic maintenance and testing, modification, and repair for its processor-based signal and train control systems. At the NPRM stage the Standards Task Force recommended to the Working Group that railroad employees working with safety-critical products in the field have a manual with complete and current information for installation, maintenance, repair, modification, inspection, and testing of the product being serviced; the recommendation was incorporated in RSAC's recommendation to FRA and adopted by FRA in the NPRM. FRA received several comments generally addressing this section. Commenters expressed concern about the significant volume of paper resulting from this requirement. Comments provided alternatives to a written manual such as a computer disc or other electronic format. FRA acknowledges that an electronic format is an appropriate medium for such a manual. Electronic copies of the manual should be maintained in the same manner as other electronic records, and the manual should be included in the railroad's configuration management plan (with the master copy and dated amendments carefully maintained so that the status of instructions to the field as of any given date can be readily determined).

Paragraph (a) works with §§ 236.905 and 236.907 and requires that all specified documentation contained in the PSP necessary for the installation, repair, modification and testing of a product be placed in an Operations and Maintenance Manual for that product and be made available to both persons required to perform such tasks and to FRA.

Paragraph (b) requires that plans necessary for proper maintenance and testing of products be correct, legible, and available where such systems are deployed or maintained. The paragraph also requires that plans identify the current version of software installed, revisions, and revision dates.

Paragraph (c) requires that the Operations and Maintenance Manual identify the hardware, software, and firmware revisions in accordance with the configuration management requirements specified in the PSP.

Paragraph (d) requires that safety-critical components contained in processor-based systems, including spare equipment, be identified, replaced, handled, and repaired in accordance with the configuration management requirements specified in the PSP.

Section 236.921 Training and Qualification Program, General

This section sets forth the general requirements of an employer's training and qualification programs related to safety-critical processor-based signal and train control products. This section works in conjunction with § 236.907, which requires the PSP to provide a description of the specific training necessary to ensure the safe installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product. This section does not restrict the employer from adopting additional or more stringent training requirements. The training program takes on particular importance with respect to safety-critical processor-based signal and train control products, and in particular, processor-based train control products, because the railroad industry's workforce generally does not have thorough knowledge of the operation of such equipment and appropriate practices for its operation and maintenance. FRA believes employee training and qualification on how to properly and safely perform assigned duties are crucial to maintaining safe railroad equipment and a safe workplace.

FRA believes that many benefits will be gained from the railroads' investment in a comprehensive training program. The quality of inspections will improve, which will result in fewer instances of defective equipment in revenue service and increased operational safety. Under an effective training program: Equipment conditions that require maintenance attention are more likely to be discovered and repairs can be completed safely and efficiently; trouble-shooting will more likely take less time; and maintenance will more likely be completed correctly the first time, resulting in increased safety and decreased costs.

The program will provide training for persons whose duties include inspecting, testing, maintaining or repairing elements of a railroad's safety-critical processor-based signal and train control systems, including central

office, wayside, or onboard subsystems. In addition, it will include training required for personnel dispatching and operating trains in territory where advanced train control is in use and for roadway workers whose duties require knowledge and understanding of operating rules. Finally, it will include supervisors of the foregoing persons.

FRA received one comment addressing the cost of training to the railroads. This commenter believes the costs are twofold, comprised of the actual cost of training and the cost to the industry over time as computer-trained technicians leave the industry for better paying jobs with better hours. FRA believes the actual cost of training is inescapable. The burden of the initial training of the work force will be eased as employees and contractors become familiar with the equipment on which they are working. FRA believes that refresher training is less costly than initial training, and thus will ease some of the financial burden on railroads and contractors. In addition, FRA believes any projected costs based on trained technicians leaving the industry is speculative. The possibility that employees may leave any profession is always present and difficult to quantify. FRA believes the possibility of attrition is certainly no disincentive to adequately train employees for their current jobs.

Paragraph (a) establishes the general requirement for when a training program is necessary and who must be trained. Training programs must meet the minimum requirements listed in §§ 236.923 through 236.929, as appropriate, and any more stringent requirements in the PSP for the product.

FRA received a comment expressing concern that each railroad would have the responsibility of training railroad employees, contractor employees, and presumably supplier personnel. The commenter reasoned that such a task would be impossible for any given railroad. FRA wants to clarify the intent of this section. Railroads are responsible for training their own employees. Contractors, including suppliers whose employees are performing the duties described in this section, are also responsible for training their own employees. Yet, FRA is not requiring that railroads provide training for contractor employees. FRA has changed the language of the section to substitute the term ''employer'' for the term ''railroad'' to more clearly indicate that employers are responsible for having their employees who perform work covered by this section trained and qualified. If FRA finds untrained contractors performing work that requires training, both the contractor and railroad may potentially be subject to civil penalty enforcement activity. Railroads should be seeking assurance that contractors have training programs that comply with this section and that the contractors are utilizing trained and qualified personnel to perform work on a railroad's processor-based safety-critical signal and train control products. If FRA finds untrained contractor employees conducting work which requires training, FRA can proceed against both the contractor and the railroad. If the railroad has placed a clear contractual responsibility on the provider of services to train personnel and maintain appropriate records, FRA would normally proceed first against the contractor. In any event, FRA would expect to see prompt corrective action.

Paragraph (b) establishes the general requirement that the persons cited in paragraph (a) must be trained to the appropriate degree to ensure that they have the necessary knowledge and skills to effectively complete their duties related to operation and maintenance of products.

Section 236.923 Task Analysis and Basic Requirements

This section sets forth specific parameters for training railroad employees and contractor employees to assure they have the necessary knowledge and skills to effectively complete their duties as related to safety-critical products and the functioning of advanced train control systems. FRA has changed the language of the section to substitute the term ''employer'' for the term ''railroad'' to indicate that employers, whether railroads or contractors, are responsible for complying with this section. This section explains that the functions performed by an individual will dictate what type of training that person should receive related to the railroad's processor-based signal and train control system. For example, a person that operates a train would not require training on how to inspect, test, and maintain the system equipment unless the person were also assigned to perform those tasks.

The intent of this section is to ensure that employees who work with products covered by this rule, including contractors, know how to keep them operating safely. The final rule grants the employer flexibility to focus and provide training that is needed in order to complete a specific task. However, the rule is designed to prevent the employer from using under-trained and unqualified people to perform safety-critical tasks.

This section describes that the training and qualification programs specified in § 236.919 must include a minimum group of identified requirements. These minimum requirements will be described in the PSP. This required training is for railroad employees and contractor employees to assure they have the necessary knowledge and skills to effectively complete their duties related to processor-based signal and train control systems.

Paragraphs (a)(2) and (a)(3) provide that the employer will identify inspection, testing, maintenance, repairing, dispatching, and operating tasks for signal and train control equipment and develop written procedures for performance of those tasks. Paragraph (a)(4) requires that the employer identify additional knowledge and skills above those required for basic job performance necessary to perform each task. The point here is that work situations often present unexpected challenges, and employees who understand the context within which the job is to be done will be better able to respond with actions that preserve safety. Further, the specific requirements of the job will be better understood; and requirements that are better understood are more likely to be adhered to. An example is so-called ''gap training'' for employees expected to work on electronic systems. Employees need to understand in at least a general way how their duties fit into the larger program for maintaining safety on a railroad. If they lack a basic understanding of the functioning of the systems they are working on, they are more likely to make a mistake in a situation where instructions are ambiguous and where the unusual nature of the problem prompts discovery of a void in the instruction set. Well informed employees will be less likely to free-lance trouble shooting; and, incidentally, they should also be of greater value in assisting with trouble shooting (an economic benefit which should, by itself, offset the cost of the requirement).

Paragraph (a)(5) requires that the employer develop a training curriculum which includes either classroom, hands-on, or other formally-structured training designed to impart the knowledge and skills necessary to perform each task.

FRA received a comment suggesting that the rule text assumed unlimited budget allocation for training and suggested that the training curriculum should be designed by the railroad in consultation with the manufacturer of the product, utilizing training materials and manuals prepared by the vendor.

FRA does not disagree with the comment and sees nothing in the rule text that would prevent a railroad or other employer from proceeding in this manner. The employer and manufacturer's consultation would need to be conducted with the requirements of this section in its entirety in mind.

Paragraph (a)(6) establishes the requirement that all persons subject to training requirements and their direct supervisors must successfully complete the training curriculum and pass an examination for the tasks for which they are responsible. For example, a person who operates a train would not require training on how to inspect, test, or maintain the equipment unless the person were assigned to also perform those tasks. Generally, appropriate training must be given to each of these employees prior to task assignment; however, an employee may be allowed to perform a task for which that person has not received the appropriate training only if the employees do so under the direct, on-site supervision of a qualified person. Direct supervisor is intended to mean the immediate, first-level supervisor to whom the employee reports.

FRA received comments concerning the training of direct supervisors. Commenters were concerned that direct supervisors would need to complete the same training as those who install, maintain, repair, modify, inspect, and test next generation products. The Working Group considered this comment and felt that the content of supervisor training would depend upon an analysis of the supervisor's job, including his or her specific tasks. FRA agrees with this assessment and adopted the Working Group's recommendation. The identification of training goals and the task analysis required in paragraphs (a)(1) and (2) includes management goals and tasks. Managers and supervisors must be trained to carry out the functions their duties require. If a direct supervisor is in a position where he or she may have to fulfill the responsibilities or duties of a subordinate, he or she must have the requisite knowledge and training to do so. If, however, a manager or supervisor will likely never need to fulfill the duties of a subordinate, and that person is not expected to provide technical oversight for certain functions, he or she may not need to be trained on those functions. This requirement is designed to ensure that supervisors have the requisite knowledge, training, and familiarity with the duties of their subordinates such that they can competently supervise the workforce. FRA is changing the phrase ''the training curriculum'' to ''a training curriculum'' in the text of paragraph (a)(6), in order to prevent further confusion and clarify FRA's intent.

Paragraph (a)(7) requires that periodic refresher training be conducted at intervals specified in the PSP. This periodic training must include either classroom, hands-on, computer-based training, or other formally-structured training in order that railroad employees and contractor employees maintain the knowledge and skills necessary to safely perform their assigned tasks.

Paragraph (a)(8) establishes a requirement to compare actual and desired success rates for the examination. In the NPRM, FRA proposed evaluating the effectiveness of a training program by comparing the desired and actual success rates. Railroads have expressed concern about this particular requirement, during Working Group discussion and commenters were invited to address this issue. FRA received no comment. FRA believes that by stating the requirement in such a manner, it may have inadequately described the underlying purpose of the proposed rule. The objective of this requirement is twofold. The first is to determine if the training program materials and curriculum are imparting the specific skills, knowledge, and abilities to accomplish the stated goals of the training program. The second is to determine if the stated goals of the training program reflect the correct, and current, products and operations.

Over time, changes in railroad products and operations may result in differences between the original defined goals and tasks based on the original products and operations, and goals and tasks based on the current products and operations. Similarly, over time the effectiveness of the training process may change as a result of instructional methods and student skill levels. Changes in training may be necessary as a result. Ongoing, regular verification of the results of the training process is required to ensure that the training program materials and curriculum are relevant, the learning objectives are being met, and the necessary skills, knowledge and ability are actually being imparted. Without regular feedback, verification and validation (and if necessary, adjustments, to ensure the necessary relevancy and effectiveness) cannot occur. In an effort to more accurately reflect these objectives, FRA has revised § 236.923(a)(8).

Paragraph (b) provides that the employers must maintain records which designate persons who are qualified under this section. These records must be kept until new designations are recorded or for at least one year after such person(s) leave applicable service, and must be available for FRA inspection and copying.

FRA received a comment addressing the maintenance of training records. The comment expresses concern regarding the railroad's ability to maintain records of employees other than railroad employees who may be conducting work that is covered by this section on a particular railroad. As previously mentioned in the general training discussion, railroads are not being required to maintain training records for every person covered by this section who may potentially work on their property. A railroad's contractor must maintain records on contractor employees who perform work covered by this section. FRA expects to have access to the training records of contractor employees whose work functions are covered by the training requirements of this section. Early pre-NPRM discussions by the Standards Task Force involved railroads addressing these concerns when contracting. In the final rule FRA has made explicit the requirement of railroad contractors to maintain records under this section. If FRA cannot get access to such records, the railroad and contractor or supplier may be subject to civil penalty enforcement activity.

Section 236.925 Training Specific to Control Office Personnel

This section explains the training that must be provided to employees responsible for issuing or communicating mandatory directives. This training must include instructions concerning the interface between computer-aided dispatching systems and processor-based train control systems as applicable to the safe movement of trains and other on-track equipment. In addition, the training must include operating rules that pertain to the train control system, including the provision for moving unequipped trains and trains on which the train control system has failed or been cut out en route.

This section sets forth the requirements for instructions on control of trains and other on-track equipment when a train control system fails. It also includes periodic practical exercises or simulations and operational testing under part 217 to assure that personnel are capable of providing for safe operations under alternative operation methods.

Section 236.927 Training Specific to Locomotive Engineers and Other Operating Personnel

This section specifies minimum training requirements for locomotive engineers and other operating personnel who interact with processor-based train control systems. ''Other operating personnel'' is intended to refer to on-board train and engine crew members (*i.e.,* conductors, brakemen, and assistant engineers). FRA invited comments addressing the issue of whether a formal definition is needed for ''other operating personnel.'' FRA received no comment on the term and has decided to leave it undefined. Paragraph (a) requires that the training contain familiarization with the onboard processor-based equipment and the functioning of that equipment as part of a train control system and its relationship to other onboard systems under that person's control. The training program must cover all notifications by the system (*i.e.* onboard displays) and actions or responses to such notifications required by onboard personnel, as well as how each action or response ensures proper operation of the system and safe operation of the train.

Paragraph (b) states that with respect to certified locomotive engineers, the training requirements of this section must be integrated into the training requirements of 49 CFR part 240.

Paragraph (c) addresses requirements for use of a train control system to effect full automatic operation, as defined in § 236.903. FRA acknowledges that this rule is not designed to address all of the various safety issues which accompany full automatic operation (although it by no means discourages their development and implementation); however, insofar as skills maintenance of the operator is concerned, the rule offers the standards in this paragraph.

Paragraph (c)(1) establishes the requirement that the PSP must identify all safety hazards to be mitigated by the locomotive engineer.

Paragraph (c)(2) concerns required areas of skills maintenance training. The NPRM provided that training requirements can be worked out individually among the railroad, its labor representative(s), and the FRA. FRA continues to support this reasoning andnotesthat in all cases, the PSP must define the appropriate training intervals for these tasks.

FRA received one general comment on this section. The commenter appears to be seeking clarification that each railroad will have the flexibility to develop its locomotive engineer training program to be applicable to the particular system being installed by that railroad. FRA agrees that there is no one curriculum across the board that will generally satisfy the locomotive engineer training requirements. As with the general training requirements, the requisite task analysis will be specific to the functions of the system or systems of each railroad. Accordingly, the resulting training curriculum will correspond with the tasks or functions necessary for that particular system.

Section 236.929 Training Specific to Roadway Workers

This section requires the railroad to incorporate appropriate training in the program of instruction required under part 214, subpart C, Roadway Worker Protection. This training is designed to provide instruction for workers who obtain protection for roadway work groups or themselves and will specifically include instruction to ensure an understanding of the role of a processor-based train control system in establishing protection for workers and their equipment, whether at a work zone or while moving on track between work locations. Also, this section requires that training include recognition of processor-based train control equipment on the wayside and how to avoid interference with its proper functioning.

FRA received two comments addressing this section. One comment echoed previous concerns regarding the locomotive engineer training program. The commenter seemed to be seeking assurance that each railroad's roadway worker training program would be developed to apply specifically to its processor-based system. As noted earlier, FRA is not seeking compliance with any general curriculum. The required task analysis will tailor each program to the needs of the particular system to which it applies.

The second comment regarding this section suggested adding rule language to address instruction for roadway workers in case of abnormal operations. The commenter considers abnormal operations instances where there is a loss of protection provided by the processor-based system. This comment was discussed during the final meeting addressing the rule. The Working Group members referenced the language in ''236.925(c) regarding control office personnel, as possible language to use for the added requirement. FRA agrees with the commenter. FRA assumes that a good task analysis would include procedures and training on procedures for system failures. Roadway workers are uniquely situated out on the right-of-way at risk of being struck by trains and on-track equipment. Given the potential for exposure to extreme peril, FRA believes specifying training and periodic drills on that training is worthwhile. FRA is adding to paragraph (b) an additional requirement numbered paragraph (b)(3) duplicating, in part, the language of § 236.925(c).

Appendix B to Part 236—Risk Assessment Criteria

Appendix B provides a set of criteria for performing risk assessments for products sought to be implemented on a railroad. During early deliberations, prior to issuance of the NPRM, suppliers indicated concern for flexibility in performing risk assessments. FRA recognizes this concern, yet must balance it against the need for uniformity in the conduct of risk assessments performed under this subpart. This need for uniformity across all products covered by subpart H is necessary when a performance standard is sought to be used. FRA has sought to balance these two seemingly competing concerns by establishing a requirement that the risk assessment criteria be followed, but allowing for other approaches to be used if FRA agrees they are equally suitable.

Paragraph (a) addresses the life-cycle term for purposes of the risk assessment. FRA believes new signal and train control systems will be in place for at least 25 years, based on the life-cycles of current systems. Over time, these systems will be modified from their original design. FRA is concerned that subsequent modifications to a product might not conform with the product's original design philosophy. The original designers of products covered by this subpart could likely be unavailable after several years of operation of the product. FRA feels that requiring an assumption of a 25-year life-cycle for products will adequately address this problem. FRA believes this proposed criterion will aid the quality of risk assessments conducted per this subpart by forcing product designers and users to consider long-term effects of operation. However, FRA feels such a criterion would not be applicable if, for instance, the railroad limited the product's term of proposed use. In such case, FRA would only be interested in the projected risks over the projected life-cycle, even if less than 25 years.

Paragraph (a) also addresses the scope of the risk assessment for the risk calculation of the proposed product. The assessment must measure the accumulated residual risk of a signal and train control system, after all mitigating measures have been

implemented. This means that the risk calculation shall attempt to assess actual safety risks remaining after implementation of the proposed product. FRA is fairly certain that railroads proposing new products will have planned or taken measures to eliminate or mitigate any hazards which remain after the product has been designed. These might include training or warning measures. For the purpose of the risk calculation for a proposed product, FRA is interested only in residual risks, or those which remain even after all mitigating measures have been taken.

Paragraph (b) addresses the risks connected with the interaction of product components. Each signal and train control system covered by this subpart is considered to be subject to hazards associated with failure of individual components, as well as hazards associated with improper interaction of those components. FRA is aware that many unanticipated computer system faults have arisen from incomplete analysis of how components will interact. This problem is of vital importance when safety-critical systems are involved, such as those targeted by subpart H.

Paragraph (c) addresses how the previous condition is computed. The requirement mandates the identification of each subsystem and component in the previous condition and estimation of an MTTHE value for each of those subsystems and components. FRA feels that the MTTHE is an adequate measure of the reliability and safety of those subsystems and components, and it facilitates the comparison of subsystems and components which are to be substituted on a one-for-one basis (see § 236.909(d)). In some cases, current safety data for the particular territory on which the product is proposed to be implemented may be used to determine MTTHE estimates. The purpose of this provision is to require railroads to produce the basis for any previous condition calculations.

Paragraphs (d) and (e) deal with some types of risks which must be considered when performing the risk assessment. FRA believes that the listed items are relevant to any risk assessment of signal and train control systems and thus ought to be considered. However, there may exist situations when one or more of the categories of risk are not relevant, such as when a system does not involve any wayside subsystems or components. In such case, FRA would obviously not require consideration of such risks, but would expect the risk assessment to briefly explain why.

Paragraph (f)(1) addresses how MTTHE figures are calculated at the subsystem and component level. FRA feels that MTTHE should be calculated for each integrated hardware/software subsystem and component. FRA expects that quantitative MTTHE calculation methods will be used where it is appropriate and when sufficient data is available. For factors such as non-processor based systems which are connected to processor-based subsystems, software subsystems/components, and human factors, FRA realizes that quantitative MTTHE values may be difficult to assign. In these cases, the rule allows qualitative values to be used or estimated. Furthermore, for all human-machine interface components/subsystems, appropriate MTTHE estimates must be assigned. FRA feels this is necessary because an otherwise reliable product which encourages human errors could result in a dramatic degradation of safety. FRA believes this risk should be identified in the risk assessment.

Paragraph (f)(2) addresses the MTTHE estimates. The rule requires that all MTTHE estimates be made with a high degree of confidence, and relate to scientific analysis or expert opinion based on documented qualitative analysis. This paragraph also indicates the railroad must devise a compliance process which ensures that the analysis is valid under actual operating conditions. Since the relevant Standards Task Force recommendation which was the basis for the NPRM, did not provide any criteria as to how such a compliance process would be expected to operate, FRA invited comments addressing this issue. No comments were submitted. FRA has determined that each railroad will determine its own compliance process and the Appendix will remain the same.

Paragraph (g) establishes criteria for calculation of MTTHE values for non-processor-based components which are part of a processor-based system or subsystem. FRA believes that it will be common for future systems to combine processor-based components with other components, such as relay-based components. Thus, failures of non-processor-based components must be considered when determining the safety of the total system.

Paragraph (h) establishes a requirement to document all assumptions made for purposes of the risk assessment. FRA does not intend to hold the railroads to directly document these assumptions, but rather to be responsible for their documentation and production if so requested by FRA. FRA imagines that suppliers will in most cases perform the actual documenting task.

Paragraph (h)(1) addresses documentation of assumptions concerning reliability and availability of mechanical, electric, and electronic components. In order to assure FRA that risk assessments will be performed diligently, FRA requires documentation of assumptions. FRA envisions sampling and reviewing fundamental assumptions both prior to product implementation and after operation for some time. FRA intends for railroads to confirm the validity of initial risk assessment assumptions by comparing them to actual in-service data. FRA is aware that mechanical and electronic component failure rates and times to repair are easily quantified data, and usually are kept as part of the logistical tracking and maintenance management of a railroad.

Paragraph (h)(2) addresses assumptions regarding human performance. Assumptions about human performance should consider all the categories of unsafe acts as described by Reason (1990). Some methods to assess human reliability, such as the Human Cognitive Reliability model (Kumamoto and Henley, 1996, pp. 506–508), assume that unsafe acts of certain types (*e.g.*, lapses and slips) do not occur. Such a method must be supplemented with other methods, such as THERP (Technique for Human Error-Rate Prediction), that are designed to assess these unsafe acts (Kumamoto and Henley, 1996, p. 508). The hazard log required by § 236.907(a)(6) will help determine the appropriateness of the assumptions employed. This database should contain sufficient quantitative detail and narrative text to allow a systematic human factors analysis (examples of procedures to accomplish this can be found in Gertman and Black, 1994, Ch.2) to determine the nature of the unsafe acts involved and their relationship to the deployment of PTC technology, procedures and underlying factors. Thus, FRA does not intend to require railroads to maintain electronic databases solely containing human performance data. However, FRA envisions this requirement will have the effect of railroads maintaining what relevant data they can on human performance. For instance, programs of operational tests and inspections (part 217) will have to be adapted to take into consideration changes in operating rules incident to implementation of new train control systems.

Paragraph (h)(3) discusses risk assessment assumptions pertaining to software defects. FRA believes that projected risks of software failures are

difficult to forecast. Therefore, FRA feels it is important to verify that software assumptions are realistic and not overly optimistic.

Paragraph (h)(4) establishes a requirement for the documentation of identified fault paths. Fault paths are key safety risk assumptions. Failing to identify a fault path can have the effect of making a system seem safer on paper than it actually is. When an unidentified fault path is discovered in service which leads to a previously unidentified safety-relevant hazard, the threshold for defects in the PSP is automatically exceeded, and the railroad must take mitigating measures pursuant to § 236.917(b). FRA believes it is possible that railroads will encounter previously unidentified fault paths after product implementation. The frequency of such discoveries would likely be related to the quality of the railroad's safety analysis efforts. Safety analyses of poor quality are more likely to lead to in-service discovery of unidentified fault paths. Some of those paths might lead to potential serious consequences, while others might have less serious consequences. FRA is requiring the railroads to estimate the consequences of these unidentified faults as if they would continue being detected over the twenty-five year life of the product. Each product is to be treated as though it would be in service for twenty-five years from the current date, and unidentified faults would continue to be discovered at the same rate as they had been for the greater of the previous ten years in service or the life of the product. All new products are to be treated as though they had been in service for at least six months in order to prevent an early-discovered fault path from having drastic impact.

Appendix C to Part 236—Safety Assurance Criteria and Processes

During the December 2001 meeting of the PTC Working Group, a small team representing the various stakeholders and interested parties was assigned to review and address comments to Appendices C and D. The team met independently of the full PTC Working Group and presented its ideas and conclusions to the full PTC Working Group for consensus. The team recommended several changes for Appendix C, but suggested that Appendix D remain the same. The PTC Working Group reached consensus to adopt the recommended changes proposed by the team (but the full Committee failed to adopt the recommendations). FRA has elected to proceed with these changes because they add clarity and flexibility. The resulting changes are discussed with the provision of the appendix to which they apply.

Appendix C sets forth minimum criteria and processes for safety analyses conducted in support of RSPPs and PSPs. The intention of Appendix C is to provide safety guidelines distilled from proven design considerations. These guidelines can be translated into processes designed to ensure the safe performance of the product. The analysis required in Appendix C is designed to minimize failures that would have the potential to affect the safety of railroad operations. FRA recognizes there are limitations regarding how much safety can be achieved given technology limitations, cost, and other constraints. As recommended by the Standards Task Force, prior to the NPRM, FRA is establishing the objectives in the appendix, recognizing this principle.

Paragraph (a) discusses the purpose of this Appendix C. This appendix sets forth minimum criteria and processes for safety analyses conducted in support of RSPPs and PSPs. FRA is changing the language of the NPRM, in response to comments suggesting that FRA make clear that Appendix C is an informative annex, which does not set forth regulatory requirements. The text of paragraph (a)(1) is being revised to reference ''objectives'' in lieu of ''requirements.''

Paragraph (b) covers safety considerations and principles which the designer must follow unless the consideration or principle does not apply to the product. In the latter case, the designer is required to state why it believes the consideration or principle does not apply. These safety considerations and principles resulted from early discussions of the Standards Task Force, publication of the NPRM, and are recognized by the industry to be recommended practices for the development of safety-critical systems. FRA believes these proven safety considerations and concepts are a necessary starting point for the development of products under subpart H. FRA received a comment suggesting that the agency maintain and provide the most recent edition of approved validation standards. This comment was discussed at the PTC Working Group meeting. FRA decided to disregard this comment because most standards are widely available and procurement does not present a major problem. In addition, most standards are copyrighted and FRA could not reproduce them for wide dissemination.

Paragraph (b)(1) discusses design considerations for normal operation of the product. FRA notes that in normal operation, the product should be designed such that human error would not cause a safety hazard. This principle recognizes that safety risks associated with human error cannot be totally eliminated by design, no matter how well-trained and skilled the operators. FRA received a comment addressing this paragraph suggesting that compliance with this objective would be impossible. The Working Group discussed and concluded that the third sentence of this provision should be changed to read, ''Absence of specific operator actions or procedures will not prevent the system from operating safely.'' Although no formal recommendation was made by RSAC on resolution of this issue or accepted by FRA, FRA believes that the Final Rule should include this language. FRA received an additional comment on this section requesting clarification regarding the source of what constitutes an unacceptable or undesirable hazard. The Working Group discussed including a reference to MIL–STD 882 C in the final sentence of the paragraph. FRA has concluded that including such a reference in the Final Rule is appropriate and has changed the rule accordingly.

Paragraph (b)(2) addresses design considerations dealing with systematic failure. Systematic failures or errors are those that can occur when the product is poorly developed and/or the human-machine interface is not given proper design attention. FRA received a comment expressing concern that the objective of this paragraph is an absolute and un-achievable requirement. Working Group discussions concluded that the initial sentence of the paragraph should be modified to read, ''It must be shown how the product is designed to mitigate or eliminate unsafe systematic failures.'' As previously noted, no formal RSAC recommendation was made to FRA. Nevertheless, FRA believes that the discussed language is useful and has added the following to the end of the suggested sentence, ''the conditions which can be attributed to human error that could occur at various stages throughout product development.''

Paragraph (b)(3) addresses random failure. FRA recognizes hardware can fail when components fail due to wear and tear, overheating, harsh environmental conditions, etc. This consideration ensures that such hardware failures do not compromise safety. FRA received a comment expressing concern that automatic restarts may not always be optimal. Working Group discussions concluded

that the fourth sentence of the paragraph (b)(3)(i) should be modified to read, ''In the event of a transient failure and if so designed, the system should restart itself, if it is safe to do so.'' As previously noted, no formal RSAC recommendation was made to FRA. FRA has amended the Final Rule to include the Working Group language, for clarity. FRA also received a comment suggesting that paragraph (b)(3)(ii)'s objective is too restrictive and un-achievable. The Working Group concluded that use of the word ''credible'' to modify single point failures would alleviate the commenter's concern. FRA thinks the addition of that word makes good sense, and the final rule reflects that change.

Paragraph (b)(4) deals with common mode failure. The common mode failures are those that stem from a component failure that can cause other components to fail due to close association among components. These failures are due primarily to poor design practices with respect to interaction among and between components.

Paragraph (b)(5) discusses external influences. FRA notes that external influences need to be taken into account for the safety of the product. Close attention needs to be given to the environment in which the equipment operates.

Paragraph (b)(6) addresses product modifications. In addition to PSP requirements and other relevant requirements of subpart H, close attention needs to be given as to how these modifications affect safety when modifications are made.

Paragraph (b)(7) deals with software design. Software integrity is crucial to the safety of the product. Non-vital (or non-fail-safe) components need to be controlled in such a manner so their failure does not create a hazard. For example, if a semiconductor's memory fails, software checks into the semiconductor locations can determine if a potential data corruption has occurred and take appropriate action so that the corrupted data does not constitute a hazard. Hence the importance of software design for the software controlling these types of components.

Paragraph (b)(8) addresses the closed loop principle. Closed loop means that a system is designed so that its output is continuously compared with its input to determine if an error has occurred.

FRA added a separate paragraph (9) in this appendix specifically to discuss human factors design considerations. Human-centered design principles recognize that machines can only be as effective as the humans who use them. The goals of human factors requirements and concepts in product design are to enhance safety, increase the effectiveness and efficiency of work, and reduce human error, fatigue, and stress. Since the implementation of any new system, subsystem or component can directly or indirectly change the nature of tasks that humans perform, both negative and positive consequences of implementation should be considered in design. FRA believes that these principles need to be adequately addressed early in the product development stage rather than at the end of it. Often times, an engineer or evaluator unfamiliar with human factors issues will attempt to address human factors issues as the end of the product development stage nears, at which point only changes in the way the product is implemented are possible (*i.e.*, accommodating changes in operations, additional training, etc.). Thus, FRA envisions compliance with this paragraph to be satisfied with consideration of input from a qualified human factors professional as early as possible in the development process. In addition, FRA believes that compliance with the principles set forth in Appendix E is essential to address the agency's human factors concerns.

Paragraph (c) provides that certain listed standards may be used for verification and validation procedures. These standards are already current industry/consensus standards.

Appendix D to Part 236—Independent Review and Assessment of Verification and Validation

Paragraph (a) discusses the purpose of an independent third party assessment of product verification and validation. FRA described some of the background for the requirement in the NPRM.

The requirement for an independent third party assessment is a reasonably common one in the field of safety-critical electronic systems. FRA's experience with emerging systems suggests that this approach can enhance the quality of decision making by railroads and FRA in several ways.

First, if those who design and produce electronic systems know that they may face a third party review, they will be more rigorous in creating and maintaining safety documentation for their systems. Suppliers know that FRA has limited technical assets to devote to this kind of effort, and documentation of safety engineering practice has in some instances been lacking in the past. Documentation, by itself, will not ensure a safe system. However, the absence of documentation will make it virtually impossible to ensure the safety of the system throughout its life-cycle; and this rule allows technical risks much greater than those previously managed by railroads and FRA in the past.

Second, a third-party assessment will help FRA make well informed decisions in those cases where approval of the PSP is required. The third party brings a perspective independent of the designer and allied with the interest of the railroad in ensuring the system is safe. The third party also brings a level of technical expertise that may not be available on the staff of the railroad—in effect, permitting the railroad (and thus FRA) to look behind claims of the vendor to actual engineering practice.

Third, because the third-party review can be conducted in phases as the product is specified, designed, and produced, the review should be available to the railroad and FRA as the PSP is submitted, avoiding delay associated with iterative inquiries by FRA.

Finally, where the system in question utilizes a novel architecture, relies heavily on COTS hardware and software, or is offered to replace an existing system that is highly competent, third-party review will permit a more highly refined evaluation of the MTTHE estimates which are the raw material for the system risk assessment. Very often these estimates will be critical to review of the system.

The NPRM offered specific criteria for determining whether a third-party assessment ought to be performed, and these are carried forward in the final rule. See § 236.913(h).

Paragraphs (c) through (f) discuss the substance of the third-party assessment. This assessment should be performed on the system as it is finally configured, before revenue operations commence, and requires the reviewer to prepare a final report. A typical assessment can be divided into four levels as it progresses: the preliminary level, the functional level, the implementation level, and the closure level.

Paragraph (c) addresses the reviewer's tasks at the preliminary level. Here, the assessor reviews the supplier's processes as set forth in the documentation and provides comments to the supplier. The reviewer should be able to determine vulnerabilities in the supplier's processes and the adequacy of the RSPP and PSP as they apply to the product. ''Acceptable methodology'' is intended to mean standard industry practice, as contained in MIL–STD–882C, such as hazard analysis, fault tree analysis, failure mode and effect criticality analysis, or other accepted applicable methods such as fault

injection, Monte Carlo or Petri-net simulation. FRA is aware of many acceptable industry standards, but usage of a less common one in PSP analysis would most likely require a higher level of FRA scrutiny. In addition, the reviewer considers the completeness and adequacy of the required safety documents, including the PSP itself.

Paragraph (d) discusses the reviewer's tasks at the functional level. Here, the reviewer will analyze the supplier's methods to establish that they are complete and correct. First, a Preliminary Safety Analysis is performed in the design stage of a product. In addition to describing system requirements within the context of the concept of operations, it attempts, in an early stage, to classify the severity of the hazards and to assign an integrity level requirement to each major function (in conventional terms, a preliminary hazard analysis).

Traditional methodology practices widely accepted within industry and recognized by military standard MIL–STD–882C include: Hazard Analysis, Fault Tree Analysis (FTA), Failure Mode and Effects Analysis (FMEA), and Failure Modes, Effects, and Criticality Analysis (FMECA).

Hazard analysis is an extension of the PHA performed in the later phases of product development. This hazard analysis focuses more on the detailed functions of the product and its components. A hazard analysis can be repeated as needed as the product matures. A competent safety assessor should be able to determine if sufficient hazard analyses were performed during the product development cycle.

FTA starts with an identification of all hazards and determines their possible causes. Data from earlier incidents can also be used as a starting point for the analysis. This method concentrates on events that are known to lead to hazards.

FMEA considers the failure of any component within a system, tracks the effects of the failure and determines its consequences. FMEA is particularly good at detecting conditions where a single failure can result in a dangerous situation; however, its primary drawback is that it doesn't consider multiple failures. FMEA involves much detailed work and is expensive to apply to large complex systems. FMEA is usually used at a late stage in the development process, and is applied to critical areas, rather than to the complete system. FMECA is an extension of FMEA that identifies the areas of greatest need. The above descriptions are taken from ''Safety-Critical Computer Systems'' (Storey, Neil; Addison-Wesley Longman (Harlow, England 1996), pp. 33–57.)

Other simulation methods may also be used in conjunction with the above methods, or by themselves when appropriate. These simulation methods include fault injection, a technique that evaluates performance by injecting known faults at random times during a simulation period; Markov modeling, a modeling technique that consists of states and transitions that control events; Monte Carlo model, a simulation technique based on randomly-occurring events; and Petri-net, an abstract, formal model of information flow that shows static and dynamic properties of a system. A Petri-net is usually represented as a graph having two types of nodes (called places and transitions) connected by arcs, and markings (called tokens) indicating dynamic properties.

Paragraph (e) addresses what must be performed at the implementation level. At this stage, the product is now beginning to take form. The reviewer typically evaluates the software. Most likely, the software will be in modular form, such that software modules are produced in accordance to a particular function. The reviewer must select a significant number of modules to be able to establish that software is being developed in a safe manner.

Paragraph (f) discusses the reviewer's tasks at closure. The reviewer's primary task at this stage is to prepare a final report where all product deficiencies are noted in detail. This final report may include material previously presented to the supplier during earlier development stages.

Appendix E to Part 236—Human-Machine Interface (HMI)

This appendix provides human factors design criteria. At the NPRM stage of the rulemaking, a small group of members from the Working Group comprised the Human Factors Team. The task given them was to develop comprehensive design considerations for human factors and human-machine interfaces. Their suggestions were presented as part of the recommendation to the RSAC for the NPRM. The RSAC recommendation, including the suggestions of the Human Factors Team, was accepted by FRA as part of the NPRM. Although there was no formal recommendation for a Final Rule from RSAC to FRA, FRA has based this appendix on the language provided in the NPRM. This appendix addresses the basic human factors principles for the design and operation of displays, controls, supporting software functions, and other components in processor-based signal or train control systems and subsystems. The HMI requirements in this appendix attempt to capture the lessons learned from the research, design, and implementation of similar technology in other modes of transportation and other industries. FRA has placed in the docket for this rulemaking a research document that contains a broad spectrum of references to the literature in this area.

The overriding goal of this appendix is to minimize the potential for design-induced error by ensuring that processor-based signal or train control systems are suitable for operators, and their tasks and environment. The overriding conclusion from the research is that processor-based signal or train control systems that have been designed with human-centered design principles in mind—system products that keep human operators as the central active component of the system—are more likely to result in improved safety.

Paragraph (a) addresses the purpose of the HMI requirement. The team concluded from its research that increased automation of systems through the use of products involves negative safety effects, as well as positive ones. Products with human-centered design features, however, are more likely to result in improved system safety. The human-centered systems approach recognizes that technology is only as effective as the humans who must use it. HMI designs that do not consider human capabilities, limitations, characteristics and motivation will be less efficient, less effective and less safe to operate. Therefore, the HMI requirement articulated in this appendix promotes consideration of these issues by designers during the development of HMIs.

Paragraph (b) defines two essential terms, ''designer'' and ''operator,'' which are critical to a clear understanding of the HMI requirement.

Paragraph (c) highlights various issues that designers should be aware of and attempt to prevent during the design process. For example, paragraph (c)(1) addresses ''reduced situation awareness and over-reliance,'' which can result when products transform the role of a human operator from an active system controller to a passive system monitor. Essentially, a passive operator is less alert to what the system is doing, may rely too heavily on the system and become less capable of reacting properly when the system requires the operator's attention. For that reason the HMI requirement promotes operator action to maintain operation of the equipment and provide numerous opportunities for practice. The requirement further

provides that operator action be sustained for a period of at least 30 minutes so that an operator remains involved and resistant to distraction, *e.g.,* management by consent rather than management by exception. In addition, the HMI requirement promotes advance warning. This requirement is designed to prevent an overreaction by operators who need to respond to an emergency. By warning operators in advance when action is required, the operator is more likely to take appropriate action. The final requirement addressing situation awareness involves equalization of the workload. Essentially, the operator should be assisted more during high workload conditions and less during low workload conditions. To the extent the HMI design addresses the situation awareness requirements, operators are more likely to be alert and react properly when the system requires their attention.

Paragraph (c)(2) addresses another HMI issue, ''predictability and consistency'' in product behavior. For example, objects designed for predictability should move forward when an operator pushes the object or its controller forward, and valves designed for consistency should open in the same direction. In addition, new controls that require similar actions to older like controls should minimize the interference of learning in the transfer of knowledge and take advantage of already automated behaviors (*i.e.,* new controls should be ''backwards compatible''). The consistency envisioned by the HMI requirement would also apply to the terminology used for text and graphic displays.

Paragraph (c)(3) addresses a third HMI issue, which involves a human's limited memory and ability to process information. The fact that humans can process only one or two streams of information at a time without loss of information is termed ''selective attention.'' A remedy for selective attention is reducing an operator's information processing load by focusing on integrated information, the format of the information, and by testing decision aids to evaluate their true benefits. These solutions are in this paragraph. Finally, paragraph (c)(4) addresses miscellaneous human factor concerns that must be addressed at the design stage.

Paragraph (d) addresses design elements for on-board displays and controls. Paragraph (d)(1) articulates specific requirements for the location of displays and controls. These requirements need little explanation, since they are well-known principles. However, it must be recognized that these principles may at times conflict with each other. For example, it may not be possible to arrange controls according to their expected order of use and locate displays as close as possible to the controls that affect them. Trade-offs are often required in the design of effective, efficient and safe HMIs. System designers must ensure that appropriate personnel evaluate these critical decisions and make the appropriate trade-offs.

Paragraph (d)(2) pertains to information management by highlighting some of the industry recognized minimum standards for human-centered design of displays. Important information management issues include displaying information to emphasize its importance (*i.e.* alarms and other significant changes or unusual events presented with clear salient indicators, not by small changes or ambiguous displays that are easy to miss), avoiding unnecessary detail where text is used, avoiding text in all capital letters, and designing warnings to match the level of risk so that more dangerous conditions have aural and or visual signals that are associated with a higher level of urgency. Finally, paragraph (e) of the HMI appendix addresses requirements for problem management. These requirements essentially address in the design and implementation phase of development, the need to support situation awareness, response selection and contingency planning under unusual circumstances. These types of requirements are designed to avoid the errors humans tend to make during emergency situations and provide alternatives when the initial responses to the emergency fail.

Generally, all the literature concludes that as the nature of the task changes, performance related to those tasks inevitably changes. The nature and potential consequences of these changes can be determined by comparing the functions of an old system to that which is proposed in a new system. System evaluations of the impact of new technology on human operators must be conducted to help identify new sources of error. FRA believes that HMI evaluations conducted in accordance with the requirements of this appendix prior to implementation of new processor-based signal and train control technology will result in products that are safe and efficient.

IX. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered ''significant'' under Executive Order 12866. It is also considered to be significant under DOT policies and procedures (*see* 44 FR 11034).

FRA has prepared a Final Regulatory Evaluation addressing the economic impact of the rule. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours at FRA's docket room at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

B. Anticipated Costs and Benefits

Signal and train control systems act to prevent collisions between on-track equipment, in some cases to warn of defective track or other hazards and in some cases to govern train speed, preventing speed-related derailments. Thus the ultimate benefit of any signal and train control system's safety regulation is the provision of a safe operating environment for trains. The particular benefit of this rule is the facilitation of introducing new technology into the field of signal and train control under minimal government scrutiny.

The final rule regulates processor-based signal and train control systems. Technological advances have made these systems increasingly more attractive to railroads, yet existing FRA rules concerning design and testing of these systems impose restrictions which are unrealistic when applied to processor-based systems. In addition, in many instances, these systems are simply beyond the scope of current rules regulating traditional relay-based signal and train control systems. Consequently, FRA has been forced to regulate by exception, by issuing waivers or exemptions to its regulations on a case-by-case basis. This process has generally been recognized as time-consuming and unpredictable for the industry.

The performance standard presented here is that any new system must be at least as safe as the existing system. It does not mandate use of processor-based systems, but rather establishes performance standards for their design and use, should a railroad intend to implement one. FRA believes that a

railroad would adopt a new system under these rules only for one or more of the following three reasons:

(1) The new system is safer;

(2) The new system is less expensive and will not diminish the existing level of safety; or

(3) Continued maintenance of the existing system is no longer feasible.

In the first case, if a new system is safer, FRA assumes the railroad would adopt it only if it provided benefits which exceed costs to the railroad. Also, because the new system is safer, society at large would benefit. In the second case, if a new system were equally safe but less expensive, then the benefits would outweigh the costs to the railroad. Third, if the existing system is no longer feasible to maintain, the railroad under existing rules would be required to petition FRA in order to remove it, or would be required to replace it with a new system. FRA is not bound to grant such petitions, and the rule does not eliminate current rules regarding this abandonment process. In this instance, if the railroad replaces its system, FRA assumes it will choose the most cost-effective alternative, and the rule would ensure these alternatives are at least as safe as the current system. Only in this last case, where a railroad adopts a new system it would not otherwise have adopted, because its existing system has become impracticable to maintain, does FRA envision the rule could possibly impose a situation not in the railroad's best interest, and still one which imposes minimal costs on the railroad. FRA does not believe this case would be a common occurrence.

The final rule would require substantial safety documentation from the railroad. The documentation is required to explain how each railroad will comply with the performance standard. FRA expects these internal procedures to be more efficient than current FRA rules, since they will be particularized for each railroad.

An undetermined question is whether the cost of writing the railroad's safety plan and product safety plan exceeds the benefit from the increased flexibility. FRA does not believe so. It appears that the costliest part of the documentation will be the risk assessment. Currently, a substantial portion of this work is performed by suppliers. Each supplier now serving the rail industry uses some form of risk/safety analysis which can be documented, and although several suppliers commented that the documentation they currently gather is not adequate to meet the requirements of the rule, FRA believes that a much larger portion of the work required for the risk assessment has been done in standard engineering practices than suppliers' comments indicate. Nevertheless, FRA has added an additional means of compliance in the final rule, which will lessen any potential burden on suppliers.

The primary cost of this rule is the gathering of what FRA believes to be existing safety information into one source. This would likely be a single time expense for each system, unless the system were not to perform as expected in service. The corresponding benefit would be the railroad's ability to use the more flexible maintenance standards over the life of the system. An offset to the recurring benefit would be the cost of tracking failures which might lead to an unsafe condition.

Under the final rule, railroads using existing processor-based signal and train control systems would be required to maintain a software management control plan. FRA believes this is a desirable safety practice, as it would avoid incorrectly installing the wrong programming, either through hardware or software, in a system. FRA also believes that under the current regulations, replacing a processor or program would constitute disarrangement and would require physical testing of every device or appliance affected by that processor. In some cases, all of the switches and signals on a line are tied to a processor. It is costly and time consuming to conduct the currently required tests, and it is certainly less expensive to maintain a software management control plan, which is a step in avoiding a trigger for the disarrangement requirements. In new systems, which will include configuration management as part of the PSP, the maintenance plan may use configuration management to all but eliminate disarrangement issues. Further, configuration management will reduce the cost of troubleshooting by reducing the number of variables. Thus, insofar as existing processor-based systems are concerned, the rule will be less costly than the current rule, and FRA believes it will be more effective in promoting safety.

FRA has not quantified the above benefits because it has no way to estimate how many systems are likely to be covered by this rule, what the incremental costs will be, and when the benefits will occur. Because of the industry involvement in developing the NPRM (labor, management, and suppliers), FRA believes the benefits appear to outweigh the cost, since changes made to the NPRM language in order to derive the final rule were all likely to reduce potential burdens, without any decrease in safety. The rule does not appear to have any effect of transferring costs from the railroads to the suppliers. In addition, the suppliers as participants in the development of the NPRM, did not perceive that costs would be transferred to them.

In short, FRA does not know the magnitude of the benefits and costs because of the performance standard concepts embodied in the final rule, but believes that benefits will outweigh costs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This final rule should not have a significant economic impact on small entities. The rule does not require the implementation of processor-based signal and train control systems, but merely sets forth a performance standard for the design and operation of them. Smaller entities are not required to develop new systems with costly risk analyses. In fact, the final rule has been designed to allow small entities to be able to ''recycle'' risk analyses by taking advantage of commercially-available products. Previously-developed risk analyses should require only minor changes to reflect how the product is to be used in the railroad's own operating environment. In conclusion, FRA believes that any impact on small entities will be minimal.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual response	Average time per response	Total annual burden hours	Total annual burden cost
234.275—Processor—Based Systems—Deviations from Product Safety Plan (PSP)—Letters.	85 Railroads	25 letters	4 hours	100	$3,800
236.18—Software Management Control Plan	85 Railroads	45 plans	100 hours	4,500	297,000
236.905—Railroad Safety Program Plan (RSPP)	85 Railroads	15 plans	250 hours	3,750	153,000
—Response to FRA Request For Add'l Information.	85 Railroads	2 documents	8 hours	16	608
—FRA Approval of RSPP Modifications	85 Railroads	5 amendments	60 hours	300	13,080
236.907—Product Safety Plan (PSP)—Development	85 Railroads	30 plans	240 hours	7,200	900,000
236.909—Minimum Performance Standard—Petitions For Review and Approval.	85 Railroads	7 petitions	8 hours	56	3,696
—Performance of Full Risk Assessment	85 Railroads	5 assessments	3,000 hours	15,000	1,875,000
—Subsequent Years—Full Risk Assessment	85 Railroads	7 assessments	1,200 hours	8,400	1,050,000
—Abbreviated Risk Assessment	85 Railroads	25 assessments	240 hours	6,000	750,000
—Subsequent Years—Abbreviated Risk Assessment.	85 Railroads	10 assessments	60 hours	600	75,000
—Alternative Risk Assessment	25 assessments	5 assessments	3,000 hours	15,000	1,875,000
236.911—Exclusions—Notification to FRA	85 Railroads	20 notifications	80 hours	1,600	60,800
—Election to Have Excluded Products Covered By Submitting a Product Safety Plan (PSP).	85 Railroads	2 plans	240 hours	480	18,240
236.913—Notification/Submission to FRA of Joint Product Safety Plan.	85 Railroads	5 notices/plans	240 hours	1,200	45,600
—Petitions For Approval/Informational Filings	85 Railroads	32 petitions/filings	40 hours	1,280	48,640
—Responses to FRA Request For Further Info. After Informational Filing.	85 Railroads	20 documents	40 hours	800	30,400
—Responses to FRA Request For Further Info. After Agency Receipt of Notice of Product Development.	85 Railroads	20 documents	40 hours	800	30,400
—Technical Consultations Re: Notice of Product Dev.	85 Railroads	5 consultations	120 hours	600	75,000
—Petitions For Final Approval	85 Railroads	20 petitions	40 hours	800	30,400
—FRA Receipt of Petition & Request For More Info.	85 Railroads	10 documents	80 hours	800	30,400
—Agency Consultations To Decide on Petition	85 Railroads	10 consultations	40 hours	400	15,200
—Other Petitions For Approval	85 Railroads	5 petitions	60 hours	300	11,400
—FRA acknowledges receipt of petitions & Requests More Information.	85 Railroads	10 documents	40 hours	400	15,200
—Comments to FRA by Interested Parties	Public/RR Community	10 comments	8 hours	80	3,040
—Third Party Assessments of PSP	85 Railroads	3 assessments	4,000 hours	12,000	1,500,000
—Amendments to PSP	85 Railroads	15 amendments	40 hours	600	22,800
236.917—Retention of Records	85 Railroads	22 documents	40 hours	880	33,440
—Report of Inconsistencies with PSP to FRA	85 Railroads	40 reports	20 hours	800	30,400
236.919—Operations & Maintenance Manual	85 Railroads	30 manuals	120 hours	3,600	136,800
—Plans For Proper Maintenance, Repair, Inspection of Safety-Critical Products.	85 Railroads	30 plans	200 hours	6,000	228,000
—Hardware/Software/Firmware Revisions	85 Railroads	5 revisions	40 hours	200	7,600
—Identification of Safety-Critical Components	85 Railroads	10,000 markings	10 minutes	1,667	48,343
236.921—Training	85 Railroads	30 Training Prog	400 hours	12,000	456,000
—Training of Signalmen & Dispatchers	85 Railroads	220 sessions	40 hours/20 hours	8,400	1,050,000
236.923—Task Analysis/Basic Requirements—Rcds	85 Railroads	4,400 records	10 minutes	733	27,854

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. Environmental Impact

FRA has evaluated this final regulation in accordance with the agency's ''Procedures for Considering Environmental Impacts'' as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related statutes and directives. The agency has determined that the regulation would not have a significant impact on the human or natural environment and is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. Neither an environmental assessment or an environmental impact statement is required in this instance. The agency's review has confirmed the applicability of the categorical exclusion to this regulation and the conclusion that the final rule will not, when implemented, have a significant environmental impact.

F. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. FRA received no comments during the comment period concluding that federalism is impacted. FRA is therefore not required to include a federalism summary impact statement with the final rule. State and local

officials were involved in developing this rule. The RSAC has as permanent members two organizations representing State and local interests: the AASHTO and the ASRSM. RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members.

G. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The rules issued today do not include any mandates which will result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects

49 CFR Part 209

Administrative practice and procedure.

49 CFR Part 234

Highway safety, Railroad safety.

49 CFR Part 236

Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, FRA amends chapter II, subtitle B, of title 49, Code of Federal Regulations as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Revise paragraph (a) of § 209.11 to read as follows:

§ 209.11 Request for confidential treatment.

(a) This section governs the procedures for requesting confidential treatment of any document filed with or otherwise provided to FRA in connection with its enforcement of statutes or FRA regulations related to railroad safety. For purposes of this section, ''enforcement'' shall include receipt of documents required to be submitted by FRA regulations, and all investigative and compliance activities, in addition to the development of violation reports and recommendations for prosecution.

* * * * *

PART 234—[AMENDED]

■ 3. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 4. Add a new undesignated centerheading and new § 234.275 to read as follows:

Requirements for Processor-Based Systems

§ 234.275 Processor-based systems.

(a) The definitions in § 236.903 of this chapter shall apply to this section, where applicable.

(b) In lieu of compliance with the requirements of this subpart, a railroad may elect to qualify an existing product under part 236, subpart H of this chapter. Highway-rail grade crossing warning systems which contain new or novel technology or provide safety-critical data to a railroad signal system shall comply with part 236, subpart H of this chapter. New or novel technology refers to a technology not previously recognized for use as of March 7, 2005.

(c) The Product Safety Plan (see § 236.903 of this chapter) must explain how the performance objective sought to be addressed by each of the particular requirements of this subpart is met by the product, why the objective is not relevant to the product's design, or how safety requirements are satisfied using alternative means. Deviation from those particular requirements is authorized if an adequate explanation is provided, making reference to relevant elements of the Product Safety Plan, and if the product satisfies the performance standard set forth in § 236.909 of this chapter. (See § 236.907(a)(14) of this chapter.) Any existing products both used at highway-rail grade crossing warning systems and which provide safety-critical data to, or receive safety-critical data from, a railroad signal or train control system shall be included in the software management control plan as required in § 236.18 of this chapter.

(d) The following exclusions from the latitude provided by this section apply:

(1) Nothing in this section authorizes deviation from applicable design requirements for automated warning devices at highway-rail grade crossings in the Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, Federal Highway Administration (FHWA), dated December 18, 2000, including Errata #1 to MUTCD 2000 Millennium Edition dated June 14, 2001 (*http://mutcd.fhwa.dot.gov/*).

(2) Nothing in this section authorizes deviation from the following requirements of this subpart:

(i) § 234.207(b) (Adjustment, repair, or replacement of a component);

(ii) § 234.209(b) (Interference with normal functioning of system);

(iii) § 234.211 (Security of warning system apparatus);

(iv) § 234.217 (Flashing light units);

(v) § 234.219 (Gate arm lights and light cable);

(vi) § 234.221 (Lamp voltage);

(vii) § 234.223 (Gate arm);

(viii) § 234.225 (Activation of warning system);

(ix) § 234.227 (Train detection apparatus)—if a train detection circuit is employed to determine the train's presence;

(x) § 234.229 (Shunting sensitivity)—if a conventional track circuit is employed;

(xi) § 234.231 (Fouling wires)—if a conventional train detection circuit is employed;

(xii) § 234.233 (Rail joints)—if a track circuit is employed;

(xiii) § 234.235 (Insulated rail joints)—if a track circuit is employed;

(xiv) § 234.237 (Reverse switch cut-out circuit); or

(xv) § 234.245 (Signs).

(e) Deviation from the requirement of § 234.203 (Control circuits) that circuits be designed on a fail-safe principle must be separately justified at the component, subsystem, and system level using the criteria of § 236.909 of this chapter.

■ 5. Amend Appendix A to part 234 by adding an entry for § 234.275 as follows:

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation
* * * * *		
Subpart D—Maintenance, Inspection and Testing		
* * * * *		
234.275 Processor-Based Systems	$5,000	$7,500

PART 236—[AMENDED]

■ 6. Revise the authority citation for part 236 to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20501—20505; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 7. Amend § 236.0 to revise the section heading, paragraphs (a) and (b), and add new paragraphs (g) and (h) to read as follows:

§ 236.0 Applicability, minimum requirements, and penalties.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

* * * * *

(g) A person may also be subject to criminal penalties for knowingly and wilfully making a false entry in a record or report required to be made under this part, filing a false record or report, or violating any of the provisions of 49 U.S.C. 21311.

(h) The requirements of subpart H of this part apply to safety-critical processor-based signal and train control systems, including subsystems and components thereof, developed under the terms and conditions of that subpart.

■ 8. Add new § 236.18 to read as follows:

§ 236.18 Software management control plan.

(a) Within 6 months of June 6, 2005, each railroad shall develop and adopt a software management control plan for its signal and train control systems. A railroad commencing operations after June 6, 2005, shall adopt a software management control plan for its signal and train control systems prior to commencing operations.

(b) Within 30 months of the completion of the software management control plan, each railroad shall have fully implemented such plan.

(c) For purposes of this section, ''software management control plan'' means a plan designed to ensure that the proper and intended software version for each specific site and location is documented (mapped) and maintained through the life-cycle of the system. The plan must further describe how the proper software configuration is to be identified and confirmed in the event of replacement, modification, or disarrangement of any part of the system.

■ 9. Revise § 236.110 to read as follows:

§ 236.110 Results of tests.

(a) Results of tests made in compliance with §§ 236.102 to 236.109, inclusive; 236.376 to 236.387, inclusive; 236.576; 236.577; 236.586 to 236.589, inclusive; and 236.917(a) must be recorded on preprinted forms provided by the railroad or by electronic means, subject to approval by the FRA Associate Administrator for Safety. These records must show the name of the railroad, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record must be:

(1) Signed by the employee making the test, or electronically coded or identified by number of the automated test equipment (where applicable);

(2) Unless otherwise noted, filed in the office of a supervisory official having jurisdiction; and

(3) Available for inspection and replication by FRA and FRA-certified State inspectors.

(b) Results of tests made in compliance with § 236.587 must be retained for 92 days.

(c) Results of tests made in compliance with § 236.917(a) must be retained as follows:

(1) Results of tests that pertain to installation or modification must be retained for the life-cycle of the equipment tested and may be kept in any office designated by the railroad; and

(2) Results of periodic tests required for maintenance or repair of the equipment tested must be retained until the next record is filed but in no case less than one year.

(d) Results of all other tests listed in this section must be retained until the next record is filed but in no case less than one year.

(e) Electronic or automated tracking systems used to meet the requirements contained in paragraph (a) of this section must be capable of being reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's authority to utilize an electronic or automated tracking system in lieu of preprinted forms if FRA finds that the electronic or automated tracking system is not properly secured, is inaccessible to FRA, FRA-certified State inspectors, or railroad employees requiring access to discharge their assigned duties, or fails to adequately track and monitor the equipment. The Associate Administrator for Safety will provide the affected railroad with a written statement of the basis for his or her decision prohibiting or revoking the railroad from utilizing an electronic or automated tracking system.

■ 10. Add new § 236.787a to read as follows:

§ 236.787a Railroad.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including—

(a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(b) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

■ 11. Add new subpart H to part 236 to read as follows:

Subpart H—Standards for Processor-Based Signal and Train Control Systems

Sec.

236.901 Purpose and scope.
236.903 Definitions.
236.905 Railroad Safety Program Plan (RSPP).
236.907 Product Safety Plan (PSP).
236.909 Minimum performance standard.
236.911 Exclusions.
236.913 Filing and approval of PSPs.
236.915 Implementation and operation.
236.917 Retention of records.
236.919 Operations and Maintenance Manual.
236.921 Training and qualification program, general.
236.923 Task analysis and basic requirements.
236.925 Training specific to control office personnel.

236.927 Training specific to locomotive engineers and other operating personnel.
236.929 Training specific to roadway workers.

§ 236.901 Purpose and scope.

(a) What is the purpose of this subpart? The purpose of this subpart is to promote the safe operation of processor-based signal and train control systems, subsystems, and components that are safety-critical products, as defined in § 236.903, and to facilitate the development of those products.

(b) What topics does it cover? This subpart prescribes minimum, performance-based safety standards for safety-critical products, including requirements to ensure that the development, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those products will achieve and maintain an acceptable level of safety. This subpart also prescribes standards to ensure that personnel working with safety-critical products receive appropriate training. Each railroad may prescribe additional or more stringent rules, and other special instructions, that are not inconsistent with this subpart.

(c) What other rules apply? (1) This subpart does not exempt a railroad from compliance with the requirements of subparts A through G of this part, except to the extent a PSP explains to FRA Associate Administrator for Safety's satisfaction the following:

(i) How the objectives of any such requirements are met by the product;

(ii) Why the objectives of any such requirements are not relevant to the product; or

(iii) How the requirement is satisfied using alternative means. (See § 236.907(a)(14)).

(2) Products subject to this subpart are also subject to applicable requirements of parts 233, 234 and 235 of this chapter. See § 234.275 of this chapter with respect to use of this subpart to qualify certain products for use within highway-rail grade crossing warning systems.

(3) Information required to be submitted by this subpart that a submitter deems to be trade secrets, or commercial or financial information that is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), shall be so labeled in accordance with the provisions of § 209.11 of this chapter. FRA handles information so labeled in accordance with the provisions of § 209.11 of this chapter.

§ 236.903 Definitions.

As used in this subpart—

Associate Administrator for Safety means the Associate Administrator for Safety, FRA, or that person's delegate as designated in writing.

Component means an element, device, or appliance (including those whose nature is electrical, mechanical, hardware, or software) that is part of a system or subsystem.

Configuration management control plan means a plan designed to ensure that the proper and intended product configuration, including the hardware components and software version, is documented and maintained through the life-cycle of the products in use.

Employer means a railroad, or contractor to a railroad, that directly engages or compensates individuals to perform the duties specified in § 236.921 (a).

Executive software means software common to all installations of a given product. It generally is used to schedule the execution of the site-specific application programs, run timers, read inputs, drive outputs, perform self-diagnostics, access and check memory, and monitor the execution of the application software to detect unsolicited changes in outputs.

FRA means the Federal Railroad Administration.

Full automatic operation means that mode of an automatic train control system capable of operating without external human influence, in which the locomotive engineer/operator may act as a passive system monitor, in addition to an active system controller.

Hazard means an existing or potential condition that can result in an accident.

High degree of confidence, as applied to the highest level of aggregation, means there exists credible safety analysis supporting the conclusion that the likelihood of the proposed condition associated with the new product being less safe than the previous condition is very small.

Human factors refers to a body of knowledge about human limitations, human abilities, and other human characteristics, such as behavior and motivation, that must be considered in product design.

Human-machine interface (HMI) means the interrelated set of controls and displays that allows humans to interact with the machine.

Initialization refers to the startup process when it is determined that a product has all required data input and the product is prepared to function as intended.

Mandatory directive has the meaning set forth in § 220.5 of this chapter.

Materials handling refers to explicit instructions for handling safety-critical components established to comply with procedures specified in the PSP.

Mean Time To Hazardous Event (MTTHE) means the average or expected time that a subsystem or component will operate prior to the occurrence of an unsafe failure.

New or next-generation train control system means a train control system using technologies not in use in revenue service at the time of PSP submission or without established histories of safe practice.

Petition for approval means a petition to FRA for approval to use a product on a railroad as described in its PSP. The petition for approval is to contain information that is relevant to determining the safety of the resulting system; relevant to determining compliance with this part; and relevant to determining the safety of the product, including a complete copy of the product's PSP and supporting safety analysis.

Predefined change means any post-implementation modification to the use of a product that is provided for in the PSP (see § 236.907(b)).

Previous Condition refers to the estimated risk inherent in the portion of the existing method of operation that is relevant to the change under analysis (including the elements of any existing signal or train control system relevant to the review of the product).

Processor-based, as used in this subpart, means dependent on a digital processor for its proper functioning.

Product means a processor-based signal or train control system, subsystem, or component.

Product Safety Plan (or *PSP*) refers to a formal document which describes in detail all of the safety aspects of the product, including but not limited to procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing and modification, as well as analyses supporting its safety claims, as described in § 236.907.

Railroad Safety Program Plan (or *RSPP*) refers to a formal document which describes a railroad's strategy for addressing safety hazards associated with operation of products under this subpart and its program for execution of such strategy though the use of PSP requirements, as described in § 236.905.

Revision control means a chain of custody regimen designed to positively identify safety-critical components and spare equipment availability, including repair/replacement tracking in accordance with procedures outlined in the PSP.

Risk means the expected probability of occurrence for an individual accident

event (probability) multiplied by the severity of the expected consequences associated with the accident (severity).

Risk assessment means the process of determining, either quantitatively or qualitatively, the measure of risk associated with use of the product under all intended operating conditions or the previous condition.

Safety-critical, as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel or equipment, or both; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

Subsystem means a defined portion of a system.

System refers to a signal or train control system and includes all subsystems and components thereof, as the context requires.

System Safety Precedence means the order of precedence in which methods used to eliminate or control identified hazards within a system are implemented.

Validation means the process of determining whether a product's design requirements fulfill its intended design objectives during its development and life-cycle. The goal of the validation process is to determine ''whether the correct product was built.''

Verification means the process of determining whether the results of a given phase of the development cycle fulfill the validated requirements established at the start of that phase. The goal of the verification process is to determine ''whether the product was built correctly.''

§ 236.905 Railroad Safety Program Plan (RSPP).

(a) *What is the purpose of an RSPP?* A railroad subject to this subpart shall develop an RSPP, subject to FRA approval, that serves as its principal safety document for all safety-critical products. The RSPP must establish the minimum PSP requirements that will govern the development and implementation of all products subject to this subpart, consistent with the provisions contained in § 236.907.

(b) *What subject areas must the RSPP address?* The railroad's RSPP must address, at a minimum, the following subject areas:

(1) *Requirements and concepts.* The RSPP must require a description of the preliminary safety analysis, including:

(i) A complete description of methods used to evaluate a system's behavioral characteristics;

(ii) A complete description of risk assessment procedures;

(iii) The system safety precedence followed; and

(iv) The identification of the safety assessment process.

(2) *Design for verification and validation.* The RSPP must require the identification of verification and validation methods for the preliminary safety analysis, initial development process, and future incremental changes, including standards to be used in the verification and validation process, consistent with Appendix C to this part. The RSPP must require that references to any non-published standards be included in the PSP.

(3) *Design for human factors.* The RSPP must require a description of the process used during product development to identify human factors issues and develop design requirements which address those issues.

(4) *Configuration management control plan.* The RSPP must specify requirements for configuration management for all products to which this subpart applies.

(c) *How are RSPP's approved?* (1) Each railroad shall submit a petition for approval of an RSPP in triplicate to the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590. The petition must contain a copy of the proposed RSPP, and the name, title, address, and telephone number of the railroad's primary contact person for review of the petition.

(2) Normally within 180 days of receipt of a petition for approval of an RSPP, FRA:

(i) Grants the petition, if FRA finds that the petition complies with applicable requirements of this subpart, attaching any special conditions to the approval of the petition as necessary to carry out the requirements of this subpart;

(ii) Denies the petition, setting forth reasons for denial; or

(iii) Requests additional information.

(3) If no action is taken on the petition within 180 days, the petition remains pending for decision. The petitioner is encouraged to contact FRA for information concerning its status.

(4) FRA may reopen consideration of any previously-approved petition for cause, providing reasons for such action.

(d) *How are RSPP's modified?* (1) Railroads shall obtain FRA approval for any modification to their RSPP which affects a safety-critical requirement of a PSP. Other modifications do not require FRA approval.

(2) Petitions for FRA approval of RSPP modifications are subject to the same procedures as petitions for initial RSPP approval, as specified in paragraph (c) of this section. In addition, such petitions must identify the proposed modification(s) to be made, the reason for the modification(s), and the effect of the modification(s) on safety.

§ 236.907 Product Safety Plan (PSP).

(a) *What must a PSP contain?* The PSP must include the following:

(1) A complete description of the product, including a list of all product components and their physical relationship in the subsystem or system;

(2) A description of the railroad operation or categories of operations on which the product is designed to be used, including train movement density, gross tonnage, passenger train movement density, hazardous materials volume, railroad operating rules, and operating speeds;

(3) An operational concepts document, including a complete description of the product functionality and information flows;

(4) A safety requirements document, including a list with complete descriptions of all functions which the product performs to enhance or preserve safety;

(5) A document describing the manner in which product architecture satisfies safety requirements;

(6) A hazard log consisting of a comprehensive description of all safety-relevant hazards to be addressed during the life cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence);

(7) A risk assessment, as prescribed in § 236.909 and Appendix B to this part;

(8) A hazard mitigation analysis, including a complete and comprehensive description of all hazards to be addressed in the system design and development, mitigation techniques used, and system safety precedence followed, as prescribed by the applicable RSPP;

(9) A complete description of the safety assessment and verification and validation processes applied to the product and the results of these processes, describing how subject areas covered in Appendix C to this part are either: addressed directly, addressed using other safety criteria, or not applicable;

(10) A complete description of the safety assurance concepts used in the product design, including an

explanation of the design principles and assumptions;

(11) A human factors analysis, including a complete description of all human-machine interfaces, a complete description of all functions performed by humans in connection with the product to enhance or preserve safety, and an analysis in accordance with Appendix E to this part or in accordance with other criteria if demonstrated to the satisfaction of the Associate Administrator for Safety to be equally suitable;

(12) A complete description of the specific training of railroad and contractor employees and supervisors necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product;

(13) A complete description of the specific procedures and test equipment necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product. These procedures, including calibration requirements, shall be consistent with or explain deviations from the equipment manufacturer's recommendations;

(14) An analysis of the applicability of the requirements of subparts A through G of this part to the product that may no longer apply or are satisfied by the product using an alternative method, and a complete explanation of the manner in which those requirements are otherwise fulfilled (see § 234.275 of this chapter and § 236.901(c));

(15) A complete description of the necessary security measures for the product over its life-cycle;

(16) A complete description of each warning to be placed in the Operations and Maintenance Manual identified in § 236.919, and of all warning labels required to be placed on equipment as necessary to ensure safety;

(17) A complete description of all initial implementation testing procedures necessary to establish that safety-functional requirements are met and safety-critical hazards are appropriately mitigated;

(18) A complete description of:

(i) All post-implementation testing (validation) and monitoring procedures, including the intervals necessary to establish that safety-functional requirements, safety-critical hazard mitigation processes, and safety-critical tolerances are not compromised over time, through use, or after maintenance (repair, replacement, adjustment) is performed; and

(ii) Each record necessary to ensure the safety of the system that is associated with periodic maintenance, inspections, tests, repairs, replacements, adjustments, and the system's resulting conditions, including records of component failures resulting in safety-relevant hazards (see § 236.917(e)(3));

(19) A complete description of any safety-critical assumptions regarding availability of the product, and a complete description of all backup methods of operation; and

(20) A complete description of all incremental and predefined changes (see paragraphs (b) and (c) of this section).

(b) *What requirements apply to predefined changes?* (1) Predefined changes are not considered design modifications requiring an entirely new safety verification process, a revised PSP, and an informational filing or petition for approval in accordance with § 236.915. However, the risk assessment for the product must demonstrate that operation of the product, as modified by any predefined change, satisfies the minimum performance standard.

(2) The PSP must identify configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any such change. (Software changes involving safety functional requirements or safety critical hazard mitigation processes for components in use are also addressed in paragraph (c) of this section.)

(c) *What requirements apply to other product changes?* (1) Incremental changes are planned product version changes described in the initial PSP where slightly different specifications are used to allow the gradual enhancement of the product's capabilities. Incremental changes shall require verification and validation to the extent the changes involve safety-critical functions.

(2) Changes classified as maintenance require validation.

(d) *What are the responsibilities of the railroad and product supplier regarding communication of hazards?* (1) The PSP shall specify all contractual arrangements with hardware and software suppliers for immediate notification of any and all safety critical software upgrades, patches, or revisions for their processor-based system, sub-system, or component, and the reasons for such changes from the suppliers, whether or not the railroad has experienced a failure of that safety-critical system, sub-system, or component.

(2) The PSP shall specify the railroad's procedures for action upon notification of a safety-critical upgrade, patch, or revision for this processor-based system, sub-system, or component, and until the upgrade, patch, or revision has been installed; and such action shall be consistent with the criterion set forth in § 236.915(d) as if the failure had occurred on that railroad.

(3) The PSP must identify configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any such change, and that any such change can be audited.

(4) Product suppliers entering into contractual arrangements for product support described in a PSP must promptly report any safety-relevant failures and previously unidentified hazards to each railroad using the product.

§ 236.909 Minimum performance standard.

(a) *What is the minimum performance standard for products covered by this subpart?* The safety analysis included in the railroad's PSP must establish with a high degree of confidence that introduction of the product will not result in risk that exceeds the previous condition. The railroad shall determine, prior to filing its petition for approval or informational filing, that this standard has been met and shall make available the necessary analyses and documentation as provided in this subpart.

(b) *How does FRA determine whether the PSP requirements for products covered by subpart H have been met?* With respect to any FRA review of a PSP, the Associate Administrator for Safety independently determines whether the railroad's safety case establishes with a high degree of confidence that introduction of the product will not result in risk that exceeds the previous condition. In evaluating the sufficiency of the railroad's case for the product, the Associate Administrator for Safety considers, as applicable, the factors pertinent to evaluation of risk assessments, listed in § 236.913(g)(2).

(c) *What is the scope of a full risk assessment required by this section?* A full risk assessment performed under this subpart must address the safety risks affected by the introduction, modification, replacement, or enhancement of a product. This includes risks associated with the previous condition which are no longer present as a result of the change, new risks not present in the previous condition, and risks neither newly created nor eliminated whose nature

(probability of occurrence or severity) is nonetheless affected by the change.

(d) *What is an abbreviated risk assessment, and when may it be used?* (1) An abbreviated risk assessment may be used in lieu of a full risk assessment to show compliance with the performance standard if:

(i) No new hazards are introduced as a result of the change;

(ii) Severity of each hazard associated with the previous condition does not increase from the previous condition; and

(iii) Exposure to such hazards does not change from the previous condition.

(2) An abbreviated risk assessment supports the finding required by paragraph (a) of this section if it establishes that the resulting MTTHE for the proposed product is greater than or equal to the MTTHE for the system, component or method performing the same function in the previous condition. This determination must be supported by credible safety analysis sufficient to persuade the Associate Administrator for Safety that the likelihood of the new product's MTTHE being less than the MTTHE for the system, component, or method performing the same function in the previous condition is very small.

(3) Alternatively, an abbreviated risk assessment supports the finding required by paragraph (a) of this section if:

(i) The probability of failure for each hazard of the product is equal to or less the corresponding recommended Specific Quantitative Hazard Probability Ratings classified as more favorable than ''undesirable'' by AREMA Manual Part 17.3.5 (Recommended Procedure for Hazard Identification and Management of Vital Electronic/Software-Based Equipment Used in Signal and Train Control Applications), or—in the case of a hazard classified as undesirable—the Associate Administrator for Safety concurs that mitigation of the hazard within the framework of the electronic system is not practical and the railroad proposes reasonable steps to undertake other mitigation. The Director of the Federal Register approves the incorporation by reference of the entire AREMA Communications and Signal Manual, Volume 4, Section 17—Quality Principles (2005) in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from American Railway Engineering and Maintenance of Way Association, 8201 Corporation Drive, Suite 1125, Landover, MD 20785–2230. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., NW., Suite 7000, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*;

(ii) The product is developed in accordance with:

(A) AREMA Manual Part 17.3.1 (Communications and Signal Manual of Recommended Practices, Recommended Safety Assurance Program for Electronic/Software Based Products Used in Vital Signal Applications);

(B) AREMA Manual Part 17.3.3 (Communications and Signal Manual of Recommended Practices, Recommended Practice for Hardware Analysis for Vital Electronic/Software-Based Equipment Used in Signal and Train Control Applications);

(C) AREMA Manual Part 17.3.5 (Communications and Signal Manual of Recommended Practices, Recommended Practice for Hazard Identification and Management of Vital Electronic/Software-Based Equipment Used in Signal and Train Control Applications);

(D) Appendix C of this subpart; and

(iii) Analysis supporting the PSP suggests no credible reason for believing that the product will be less safe than the previous condition.

(e) *How are safety and risk measured for the full risk assessment?* Risk assessment techniques, including both qualitative and quantitative methods, are recognized as providing credible and useful results for purposes of this section if they apply the following principles:

(1) Safety levels must be measured using competent risk assessment methods and must be expressed as the total residual risk in the system over its expected life-cycle after implementation of all mitigating measures described in the PSP. Appendix B to this part provides criteria for acceptable risk assessment methods. Other methods may be acceptable if demonstrated to the satisfaction of the Associate Administrator for Safety to be equally suitable.

(2) For the previous condition and for the life-cycle of the product, risk levels must be expressed in units of consequences per unit of exposure.

(i) In all cases exposure must be expressed as total train miles traveled per year. Consequences must identify the total cost, including fatalities, injuries, property damage, and other incidental costs, such as potential consequences of hazardous materials involvement, resulting from preventable accidents associated with the function(s) performed by the system. A railroad may, as an alternative, use a risk metric in which consequences are measured strictly in terms of fatalities.

(ii) In those cases where there is passenger traffic, a second risk metric must be calculated, using passenger-miles traveled per year as the exposure, and total societal costs of passenger injuries and fatalities, resulting from preventable accidents associated with the function(s) performed by the system, as the consequences.

(3) If the description of railroad operations for the product required by § 236.907(a)(2) involves changes to the physical or operating conditions on the railroad prior to or within the expected life cycle of the product subject to review under this subpart, the previous condition shall be adjusted to reflect the lower risk associated with systems needed to maintain safety and performance at higher speeds or traffic volumes. In particular, the previous condition must be adjusted for assumed implementation of systems necessary to support higher train speeds as specified in § 236.0, as well as other changes required to support projected increases in train operations. The following specific requirements apply:

(i) If the current method of operation would not be adequate under § 236.0 for the proposed operations, then the adjusted previous condition must include a system as required under § 236.0, applied as follows:

(A) The minimum system where a passenger train is operated at a speed of 60 or more miles per hour, or a freight train is operated at a speed of 50 or more miles per hour, shall be a traffic control system;

(B) The minimum system where a train is operated at a speed of 80 or more miles per hour, but not more than 110 miles per hour, shall be an automatic cab signal system with automatic train control; and

(C) The minimum system where a train is operated at a speed of more than 110 miles per hour shall be a system determined by the Associate Administrator for Safety to provide an equivalent level of safety to systems required or authorized by FRA for comparable operations.

(ii) If the current method of operation would be adequate under § 236.0 for the proposed operations, but the current system is not at least as safe as a traffic control system, then the adjusted previous condition must include a traffic control system in the event of any change that results in:

(A) An annual average daily train density of more than twelve trains per day; or

(B) An increase in the annual average daily density of passenger trains of more than four trains per day.

(iii) Paragraph (e)(3)(ii)(A) of this section shall apply in all situations where train volume will exceed more than 20 trains per day but shall not apply to situations where train volume will exceed 12 trains per day but not exceed 20 trains per day, if in its PSP the railroad makes a showing sufficient to establish, in the judgment of the Associate Administrator for Safety, that the current method of operation is adequate for a specified volume of traffic in excess of 12 trains per day, but not more than 20 trains per day, without material delay in the movement of trains over the territory and without unreasonable expenditures to expedite those movements when compared with the expense of installing and maintaining a traffic control system.

(4) In the case review of a PSP that has been consolidated with a proceeding pursuant to part 235 of this subchapter (see § 236.911(b)), the base case shall be determined as follows:

(i) If FRA determines that discontinuance or modification of the system should be granted without regard to whether the product is installed on the territory, then the base case shall be the conditions that would obtain on the territory following the discontinuance or modification. **Note:** This is an instance in which the base case is posited as greater risk than the actual (unadjusted) previous condition because the railroad would have obtained relief from the requirement to maintain the existing signal or train control system even if no new product had been proffered.

(ii) If FRA determines that discontinuance or modification of the system should be denied without regard to whether the product is installed on the territory, then the base case shall remain the previous condition (unadjusted).

(iii) If, after consideration of the application and review of the PSP, FRA determines that neither paragraph (e)(4)(i) nor paragraph (e)(4)(ii) of this section should apply, FRA will establish a base case that is consistent with safety and in the public interest.

§ 236.911 Exclusions.

(a) *Does this subpart apply to existing systems?* The requirements of this subpart do not apply to products in service as of June 6, 2005. Railroads may continue to implement and use these products and components from these existing products.

(b) *How will transition cases be handled?* Products designed in accordance with subparts A through G of this part which are not in service but are developed or are in the developmental stage prior to March 7, 2005, may be excluded upon notification to FRA by June 6, 2005, if placed in service by March 7, 2008. Railroads may continue to implement and use these products and components from these existing products. A railroad may at any time elect to have products that are excluded made subject to this subpart by submitting a PSP as prescribed in § 236.913 and otherwise complying with this subpart.

(c) *How are office systems handled?* The requirements of this subpart do not apply to existing office systems and future deployments of existing office system technology. However, a subsystem or component of an office system must comply with the requirements of this subpart if it performs safety-critical functions within, or affects the safety performance of, a new or next-generation train control system. For purposes of this section, ''office system'' means a centralized computer-aided train-dispatching system or centralized traffic control board.

(d) *How are modifications to excluded products handled?* Changes or modifications to products otherwise excluded from the requirements of this subpart by this section are not excluded from the requirements of this subpart if they result in a degradation of safety or a material increase in safety-critical functionality.

(e) *What other rules apply to excluded products?* Products excluded by this section from the requirements of this subpart remain subject to subparts A through G of this part as applicable.

§ 236.913 Filing and approval of PSPs.

(a) *Under what circumstances must a PSP be prepared?* A PSP must be prepared for each product covered by this subpart. A joint PSP must be prepared when:

(1) The territory on which a product covered by this subpart is normally subject to joint operations, or is operated upon by more than one railroad; and

(2) The PSP involves a change in method of operation.

(b) *Under what circumstances must a railroad submit a petition for approval for a PSP or PSP amendment, and when may a railroad submit an informational filing?* Depending on the nature of the proposed product or change, the railroad shall submit either an informational filing or a petition for approval. Submission of a petition for approval is required for PSPs or PSP amendments concerning installation of new or next-generation train control systems. All other actions that result in the creation of a PSP or PSP amendment require an informational filing and are handled according to the procedures outlined in paragraph (c) of this section. Applications for discontinuance and material modification of signal and train control systems remain governed by parts 235 and 211 of this chapter; and petitions subject to this section may be consolidated with any relevant application for administrative handling.

(c) *What are the procedures for informational filings?* The following procedures apply to PSPs and PSP amendments which do not require submission of a petition for approval, but rather require an informational filing:

(1) Not less than 180 days prior to planned use of the product in revenue service as described in the PSP or PSP amendment, the railroad shall submit an informational filing to the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590. The informational filing must provide a summary description of the PSP or PSP amendment, including the intended use of the product, and specify the location where the documentation as described in § 236.917(e)(1) is maintained.

(2) Within 60 days of receipt of the informational filing, FRA:

(i) Acknowledges receipt of the filing;

(ii) Acknowledges receipt of the informational filing and requests further information; or

(iii) Acknowledges receipt of the filing and notifies the railroad, for good cause, that the filing will be considered as a petition for approval as set forth in paragraph (d) of this section, and requests such further information as may be required to initiate action on the petition for approval. Examples of good cause, any one of which is sufficient, include: the PSP describes a product with unique architectural concepts; the PSP describes a product that uses design or safety assurance concepts considered outside existing accepted practices (see Appendix C); and the PSP describes a locomotive-borne product that commingles safety-critical train control processing functions with locomotive operational functions. In addition, good cause includes any instance where the PSP or PSP amendment does not appear to support its safety claim of satisfaction of the performance standard, after FRA has requested further information as

provided in paragraph (c)(2)(ii) of this section.

(d) *What procedures apply to petitions for approval?* The following procedures apply to PSPs and PSP amendments which require submission of a petition for approval:

(1) *Petitions for approval involving prior FRA consultation.*

(i) The railroad may file a Notice of Product Development with the Associate Administrator for Safety not less than 30 days prior to the end of the system design review phase of product development and 180 days prior to planned implementation, inviting FRA to participate in the design review process and receive periodic briefings and updates as needed to follow the course of product development. At a minimum, the Notice of Product Development must contain a summary description of the product to be developed and a brief description of goals for improved safety.

(ii) Within 15 days of receipt of the Notice of Product Development, the Associate Administrator for Safety either acknowledges receipt or acknowledges receipt and requests more information.

(iii) If FRA concludes that the Notice of Product Development contains sufficient information, the Associate Administrator for Safety determines the extent and nature of the assessment and review necessary for final product approval. FRA may convene a technical consultation as necessary to discuss issues related to the design and planned development of the product.

(iv) Within 60 days of receiving the Notice of Product Development, the Associate Administrator for Safety provides a letter of preliminary review with detailed findings, including whether the design concepts of the proposed product comply with the requirements of this subpart, whether design modifications are necessary to meet the requirements of this subpart, and the extent and nature of the safety analysis necessary to comply with this subpart.

(v) Not less than 60 days prior to use of the product in revenue service, the railroad shall file with the Associate Administrator for Safety a petition for final approval.

(vi) Within 30 days of receipt of the petition for final approval, the Associate Administrator for Safety either acknowledges receipt or acknowledges receipt and requests more information. Whenever possible, FRA acts on the petition for final approval within 60 days of its filing by either granting it or denying it. If FRA neither grants nor denies the petition for approval within 60 days, FRA advises the petitioner of the projected time for decision and conducts any further consultations or inquiries necessary to decide the matter.

(2) *Other petitions for approval.* The following procedures apply to petitions for approval of PSPs which do not involve prior FRA consultation as described in paragraph (d)(1) of this section.

(i) Not less than 180 days prior to use of a product in revenue service, the railroad shall file with the Associate Administrator for Safety a petition for approval.

(ii) Within 60 days of receipt of the petition for approval, FRA either acknowledges receipt, or acknowledges receipt and requests more information.

(iii) Whenever possible, considering the scope, complexity, and novelty of the product or change, FRA acts on the petition for approval within 180 days of its filing by either granting it or denying it. If FRA neither grants nor denies the petition for approval within 180 days, it remains pending, and FRA provides the petitioner with a statement of reasons why the petition has not yet been approved.

(e) *What role do product users play in the process of safety review?* (1) FRA will publish in the **Federal Register** periodically a topic list including docket numbers for informational filings and a petition summary including docket numbers for petitions for approval.

(2) Interested parties may submit to FRA information and views pertinent to FRA's consideration of an informational filing or petition for approval. FRA considers comments to the extent practicable within the periods set forth in this section. In a proceeding consolidated with a proceeding under part 235 of this chapter, FRA considers all comments received.

(f) *Is it necessary to complete field testing prior to filing the petition for approval?* A railroad may file a petition for approval prior to completion of field testing of the product. The petition for approval should additionally include information sufficient for FRA to arrange monitoring of the tests. The Associate Administrator for Safety may approve a petition for approval contingent upon successful completion of the test program contained in the PSP or hold the petition for approval pending completion of the tests.

(g) *How are PSPs approved?* (1) The Associate Administrator for Safety grants approval of a PSP when:

(i) The petition for approval has been properly filed and contains the information required in § 236.907;

(ii) FRA has determined that the PSP complies with the railroad's approved RSPP and applicable requirements of this subpart; and

(iii) The risk assessment supporting the PSP demonstrates that the proposed product satisfies the minimum performance standard stated in § 236.909.

(2) The Associate Administrator for Safety considers the following applicable factors when evaluating the risk assessment:

(i) The extent to which recognized standards have been utilized in product design and in the relevant safety analysis;

(ii) The availability of quantitative data, including calculations of statistical confidence levels using accepted methods, associated with risk estimates;

(iii) The complexity of the product and the extent to which it will incorporate or deviate from design practices associated with previously established histories of safe operation;

(iv) The degree of rigor and precision associated with the safety analyses, including the comprehensiveness of the qualitative analyses, and the extent to which any quantitative results realistically reflect appropriate sensitivity cases;

(v) The extent to which validation of the product has included experiments and tests to identify uncovered faults in the operation of the product;

(vi) The extent to which identified faults are effectively addressed;

(vii) Whether the risk assessment for the previous condition was conducted using the same methodology as that for operation under the proposed condition; and

(viii) If an independent third-party assessment is required or is performed at the election of the supplier or railroad, the extent to which the results of the assessment are favorable.

(3) The Associate Administrator for Safety also considers when assessing PSPs the safety requirements for the product within the context of the proposed method of operations, including:

(i) The degree to which the product is relied upon as the primary safety system for train operations; and

(ii) The degree to which the product is overlaid upon and its operation is demonstrated to be independent of safety-relevant rules, practices and systems that will remain in place following the change under review.

(4) As necessary to ensure compliance with this subpart and with the RSPP, FRA may attach special conditions to the approval of the petition.

(5) Following the approval of a petition, FRA may reopen consideration of the petition for cause. Cause for reopening a petition includes such circumstances as a credible allegation of error or fraud, assumptions determined to be invalid as a result of in-service experience, or one or more unsafe events calling into question the safety analysis underlying the approval.

(h) *Under what circumstances may a third-party assessment be required, and by whom may it be conducted?* (1) The PSP must be supported by an independent third party assessment of the product when FRA concludes it is necessary based upon consideration of the following factors:

(i) Those factors listed in paragraphs (g)(2)(i) through (g)(2)(vii) of this section;

(ii) The sufficiency of the assessment or audit previously conducted at the election of a supplier or railroad; and

(iii) Whether applicable requirements of subparts A through G of this part are satisfied.

(2) As used in this section, ''independent third party'' means a technically competent entity responsible to and compensated by the railroad (or an association on behalf of one or more railroads) that is independent of the supplier of the product. An entity that is owned or controlled by the supplier, that is under common ownership or control with the supplier, or that is otherwise involved in the development of the product is not considered ''independent'' within the meaning of this section. FRA may maintain a roster of recognized technically competent entities as a service to railroads selecting reviewers under this section; however, a railroad is not limited to entities currently listed on any such roster.

(3) The third-party assessment must, at a minimum, consist of the activities and result in production of documentation meeting the requirements of Appendix D to this part. However, when requiring an assessment pursuant to this section, FRA specifies any requirements in Appendix D to this part which the agency has determined are not relevant to its concerns and, therefore, need not be included in the assessment. The railroad shall make the final assessment report available to FRA upon request.

(i) *How may a PSP be amended?* A railroad may submit an amendment to a PSP at any time in the same manner as the initial PSP. Notwithstanding the otherwise applicable requirements found in this section and § 236.915, changes affecting the safety-critical functionality of a product may be made prior to the submission and approval of the PSP amendment as necessary in order to mitigate risk.

(j) *How may field testing be conducted prior to PSP approval?* (1) Field testing of a product may be conducted prior to the approval of a PSP by the submission of an informational filing by a railroad. The FRA will arrange to monitor the tests based on the information provided in the filing, which must include:

(i) A complete description of the product;

(ii) An operational concepts document;

(iii) A complete description of the specific test procedures, including the measures that will be taken to protect trains and on-track equipment;

(iv) An analysis of the applicability of the requirements of subparts A through G of this part to the product that will not apply during testing;

(v) The date testing will begin;

(vi) The location of the testing; and

(vii) A description of any effect the testing will have on the current method of operation.

(2) FRA may impose such additional conditions on this testing as may be necessary for the safety of train operations. Exemptions from regulations other than those contained in this part must be requested through waiver procedures in part 211 of this chapter.

§ 236.915 Implementation and operation.

(a) *When may a product be placed or retained in service?* (1) Except as stated in paragraphs (a)(2) and (a)(3) of this section, a railroad may operate in revenue service any product 180 days after filing with FRA the informational filing for that product. The FRA filing date can be found in FRA's acknowledgment letter referred to in § 236.913(c)(2).

(2) Except as stated in paragraph (a)(3) of this section, if FRA approval is required for a product, the railroad shall not operate the product in revenue service until after the Associate Administrator for Safety has approved the petition for approval for that product pursuant to § 236.913.

(3) If after product implementation FRA elects, for cause, to treat the informational filing for the product as a petition for approval, the product may remain in use if otherwise consistent with the applicable law and regulations. FRA may impose special conditions for use of the product during the period of review for cause.

(b) *How does the PSP relate to operation of the product?* Each railroad shall comply with all provisions in the PSP for each product it uses and shall operate within the scope of initial operational assumptions and predefined changes identified by the PSP. Railroads may at any time submit an amended PSP according to the procedures outlined in § 236.913.

(c) *What precautions must be taken prior to interference with the normal functioning of a product?* The normal functioning of any safety-critical product must not be interfered with in testing or otherwise without first taking measures to provide for safe movement of trains, locomotives, roadway workers and on-track equipment that depend on normal functioning of such product.

(d) *What actions must be taken immediately upon failure of a safety-critical component?* When any safety-critical product component fails to perform its intended function, the cause must be determined and the faulty component adjusted, repaired, or replaced without undue delay. Until repair of such essential components are completed, a railroad shall take appropriate action as specified in the PSP. See also §§ 236.907(d), 236.917(b).

§ 236.917 Retention of records.

(a) *What life-cycle and maintenance records must be maintained?* (1) The railroad shall maintain at a designated office on the railroad:

(i) For the life-cycle of the product, adequate documentation to demonstrate that the PSP meets the safety requirements of the railroad's RSPP and applicable standards in this subpart, including the risk assessment; and

(ii) An Operations and Maintenance Manual, pursuant to § 236.919; and

(iii) Training records pursuant to § 236.923(b).

(2) Results of inspections and tests specified in the PSP must be recorded as prescribed in § 236.110.

(3) Contractors of the railroad shall maintain at a designated office training records pursuant to § 236.923(b).

(b) *What actions must the railroad take in the event of occurrence of a safety-relevant hazard?* After the product is placed in service, the railroad shall maintain a database of all safety-relevant hazards as set forth in the PSP and those that had not been previously identified in the PSP. If the frequency of the safety-relevant hazards exceeds the threshold set forth in the PSP (see § 236.907(a)(6)), then the railroad shall:

(1) Report the inconsistency in writing (by mail, facsimile, e-mail, or hand delivery to the Director, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, within 15 days of discovery. Documents that are hand delivered must not be enclosed in an envelope;

(2) Take prompt countermeasures to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the PSP; and

(3) Provide a final report to the FRA Director, Office of Safety Assurance and Compliance, on the results of the analysis and countermeasures taken to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the PSP when the problem is resolved.

§ 236.919 Operations and Maintenance Manual.

(a) The railroad shall catalog and maintain all documents as specified in the PSP for the installation, maintenance, repair, modification, inspection, and testing of the product and have them in one Operations and Maintenance Manual, readily available to persons required to perform such tasks and for inspection by FRA and FRA-certified State inspectors.

(b) Plans required for proper maintenance, repair, inspection, and testing of safety-critical products must be adequate in detail and must be made available for inspection by FRA and FRA-certified State inspectors where such products are deployed or maintained. They must identify all software versions, revisions, and revision dates. Plans must be legible and correct.

(c) Hardware, software, and firmware revisions must be documented in the Operations and Maintenance Manual according to the railroad's configuration management control plan and any additional configuration/revision control measures specified in the PSP.

(d) Safety-critical components, including spare equipment, must be positively identified, handled, replaced, and repaired in accordance with the procedures specified in the PSP.

§ 236.921 Training and qualification program, general.

(a) *When is training necessary and who must be trained?* Employers shall establish and implement training and qualification programs for products subject to this subpart. These programs must meet the minimum requirements set forth in the PSP and in §§ 236.923 through 236.929 as appropriate, for the following personnel:

(1) Persons whose duties include installing, maintaining, repairing, modifying, inspecting, and testing safety-critical elements of the railroad's products, including central office, wayside, or onboard subsystems;

(2) Persons who dispatch train operations (issue or communicate any mandatory directive that is executed or enforced, or is intended to be executed or enforced, by a train control system subject to this subpart);

(3) Persons who operate trains or serve as a train or engine crew member subject to instruction and testing under part 217 of this chapter, on a train operating in territory where a train control system subject to this subpart is in use;

(4) Roadway workers whose duties require them to know and understand how a train control system affects their safety and how to avoid interfering with its proper functioning; and

(5) The direct supervisors of persons listed in paragraphs (a)(1) through (a)(4) of this section.

(b) *What competencies are required?* The employer's program must provide training for persons who perform the functions described in paragraph (a) of this section to ensure that they have the necessary knowledge and skills to effectively complete their duties related to processor-based signal and train control equipment.

§ 236.923 Task analysis and basic requirements.

(a) *How must training be structured and delivered?* As part of the program required by § 236.921, the employer shall, at a minimum:

(1) Identify the specific goals of the training program with regard to the target population (craft, experience level, scope of work, etc.), task(s), and desired success rate;

(2) Based on a formal task analysis, identify the installation, maintenance, repair, modification, inspection, testing, and operating tasks that must be performed on a railroad's products. This includes the development of failure scenarios and the actions expected under such scenarios;

(3) Develop written procedures for the performance of the tasks identified;

(4) Identify the additional knowledge, skills, and abilities above those required for basic job performance necessary to perform each task;

(5) Develop a training curriculum that includes classroom, simulator, computer-based, hands-on, or other formally structured training designed to impart the knowledge, skills, and abilities identified as necessary to perform each task;

(6) Prior to assignment of related tasks, require all persons mentioned in § 236.921(a) to successfully complete a training curriculum and pass an examination that covers the product and appropriate rules and tasks for which they are responsible (however, such persons may perform such tasks under the direct onsite supervision of a qualified person prior to completing such training and passing the examination);

(7) Require periodic refresher training at intervals specified in the PSP that includes classroom, simulator, computer-based, hands-on, or other formally structured training and testing, except with respect to basic skills for which proficiency is known to remain high as a result of frequent repetition of the task; and

(8) Conduct regular and periodic evaluations of the effectiveness of the training program specified in § 236.923(a)(1) verifying the adequacy of the training material and its validity with respect to current railroads products and operations.

(b) *What training records are required?* Employers shall retain records which designate persons who are qualified under this section until new designations are recorded or for at least one year after such persons leave applicable service. These records shall be kept in a designated location and be available for inspection and replication by FRA and FRA-certified State inspectors.

§ 236.925 Training specific to control office personnel.

Any person responsible for issuing or communicating mandatory directives in territory where products are or will be in use must be trained in the following areas, as applicable:

(a) Instructions concerning the interface between the computer-aided dispatching system and the train control system, with respect to the safe movement of trains and other on-track equipment;

(b) Railroad operating rules applicable to the train control system, including provision for movement and protection of roadway workers, unequipped trains, trains with failed or cut-out train control onboard systems, and other on-track equipment; and

(c) Instructions concerning control of trains and other on-track equipment in case the train control system fails, including periodic practical exercises or simulations, and operational testing under part 217 of this chapter to ensure the continued capability of the personnel to provide for safe operations under the alternative method of operation.

§ 236.927 Training specific to locomotive engineers and other operating personnel.

(a) *What elements apply to operating personnel?* Training provided under this subpart for any locomotive engineer or other person who participates in the operation of a train in train control

territory must be defined in the PSP and the following elements must be addressed:

(1) Familiarization with train control equipment onboard the locomotive and the functioning of that equipment as part of the system and in relation to other onboard systems under that person's control;

(2) Any actions required of the onboard personnel to enable, or enter data to, the system, such as consist data, and the role of that function in the safe operation of the train;

(3) Sequencing of interventions by the system, including pre-enforcement notification, enforcement notification, penalty application initiation and post-penalty application procedures;

(4) Railroad operating rules applicable to the train control system, including provisions for movement and protection of any unequipped trains, or trains with failed or cut-out train control onboard systems and other on-track equipment;

(5) Means to detect deviations from proper functioning of onboard train control equipment and instructions regarding the actions to be taken with respect to control of the train and notification of designated railroad personnel; and

(6) Information needed to prevent unintentional interference with the proper functioning of onboard train control equipment.

(b) *How must locomotive engineer training be conducted?* Training required under this subpart for a locomotive engineer, together with required records, must be integrated into the program of training required by part 240 of this chapter.

(c) *What requirements apply to full automatic operation?* The following special requirements apply in the event a train control system is used to effect full automatic operation of the train:

(1) The PSP must identify all safety hazards to be mitigated by the locomotive engineer.

(2) The PSP must address and describe the training required with provisions for the maintenance of skills proficiency. As a minimum, the training program must:

(i) As described in § 236.923(a)(2), develop failure scenarios which incorporate the safety hazards identified in the PSP, including the return of train operations to a fully manual mode;

(ii) Provide training, consistent with § 236.923(a), for safe train operations under all failure scenarios and identified safety hazards that affect train operations;

(iii) Provide training, consistent with § 236.923(a), for safe train operations under manual control; and

(iv) Consistent with § 236.923(a), ensure maintenance of manual train operating skills by requiring manual starting and stopping of the train for an appropriate number of trips and by one or more of the following methods:

(A) Manual operation of a train for a 4-hour work period;

(B) Simulated manual operation of a train for a minimum of 4 hours in a Type I simulator as required; or

(C) Other means as determined following consultation between the railroad and designated representatives of the affected employees and approved by the FRA. The PSP must designate the appropriate frequency when manual operation, starting, and stopping must be conducted, and the appropriate frequency of simulated manual operation.

§ 236.929 Training specific to roadway workers.

(a) *How is training for roadway workers to be coordinated with part 214?* Training required under this subpart for a roadway worker must be integrated into the program of instruction required under part 214, subpart C of this chapter (''Roadway Worker Protection''), consistent with task analysis requirements of § 236.923. This training must provide instruction for roadway workers who provide protection for themselves or roadway work groups.

(b) *What subject areas must roadway worker training include?* (1) Instruction for roadway workers must ensure an understanding of the role of processor-based signal and train control equipment in establishing protection for roadway workers and their equipment.

(2) Instruction for roadway workers must ensure recognition of processor-based signal and train control equipment on the wayside and an understanding of how to avoid interference with its proper functioning.

(3) Instructions concerning the recognition of system failures and the provision of alternative methods of on-track safety in case the train control system fails, including periodic practical exercises or simulations and operational testing under part 217 of this chapter to ensure the continued capability of roadway workers to be free from the danger of being struck by a moving train or other on-track equipment.

■ 12. Amend Appendix A to part 236 by adding an entry for § 236.18 and adding entries for subpart H as follows:

APPENDIX A TO PART 236.—CIVIL PENALTIES [1]

Section	Violation	Willful violation
Subpart A—Rules and Instructions, All Systems		
* * * * * * *		
236.18 Software management control plan:		
Failure to develop and adopt a plan	$5,000	$10,000
Failure to fully implement plan	5,000	10,000
Inadequate plan	2,500	10,000
* * * * * * *		
Subpart H—Standards for Processor-Based Signal and Train Control Systems		
236.905 Railroad Safety Program Plan (RSPP):		
Failure to develop and submit RSPP when required	5,000	7,500
Failure to obtain FRA approval for a modification to RSPP	5,000	7,500
236.907 Product Safety Plan (PSP):		
Failure to develop a PSP	5,000	7,500
Failure to submit a PSP when required	5,000	7,500
236.909 Minimum Performance Standard:		

APPENDIX A TO PART 236.—CIVIL PENALTIES [1]—Continued

Section	Violation	Willful violation
Failure to make analyses or documentation available	2,500	5,000
Failure to determine that the standard has been met	5,000	7,500
236.913 Notification to FRA of PSPs:	2,500	5,000
Failure to prepare a PSP or PSP amendment as required	5,000	7,500
Failure to submit a PSP or PSP amendment as required	5,000	7,500
Field testing without authorization or approval	10,000	20,000
236.915 Implementation and operation:		
(a) Operation of product without authorization or approval	10,000	20,000
(b) Failure to comply with PSP	2,500	5,000
(c) Interference with normal functioning safety-critical product	7,500	15,000
(d) Failure to determine cause and adjust, repair or replace without undue delay or take appropriate action pending repair	5,000	7,500
236.917 Retention of records:		
Failure to maintain records as required	7,500	15,000
Failure to report inconsistency	10,000	20,000
Failure to take prompt countermeasures	10,000	20,000
Failure to provide final report	2,500	5,000
236.919 Operations and Maintenance Manual	3,000	6,000
236.921 Training and qualification program, general	3,000	6,000
236.923 Task analysis and basic requirements:		
Failure to develop an acceptable training program	2,500	5,000
Failure to train persons as required	2,500	5,000
Failure to conduct evaluation of training program as required	2,500	5,000
Failure to maintain records as required	1,500	3,000
236.925 Training specific to control office personnel	2,500	5,000
236.927 Training specific to locomotive engineers and other operating personnel	2,500	5,000
236.929 Training specific to roadway workers	2,500	5,000

[1] The Administrator reserves the right to assess a civil penalty of up to $27,000 per day for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

■ 12a. Add Appendix B to part 236 to read as follows:

Appendix B to Part 236—Risk Assessment Criteria

The safety-critical performance of each product for which risk assessment is required under this part must be assessed in accordance with the following criteria or other criteria if demonstrated to the Associate Administrator for Safety to be equally suitable:

(a) *How are risk metrics to be expressed?* The risk metric for the proposed product must describe with a high degree of confidence the accumulated risk of a train system that operates over a life-cycle of 25 years or greater. Each risk metric for the proposed product must be expressed with an upper bound, as estimated with a sensitivity analysis, and the risk value selected must be demonstrated to have a high degree of confidence.

(b) *How does the risk assessment handle interaction risks for interconnected subsystems/components?* The safety-critical assessment of each product must include all of its interconnected subsystems and components and, where applicable, the interaction between such subsystems.

(c) *How is the previous condition computed?* Each subsystem or component of the previous condition must be analyzed with a Mean Time To Hazardous Event (MTTHE) as specified subject to a high degree of confidence.

(d) *What major risk characteristics must be included when relevant to assessment?* Each risk calculation must consider the total signaling and train control system and method of operation, as subjected to a list of hazards to be mitigated by the signaling and train control system. The methodology requirements must include the following major characteristics, when they are relevant to the product being considered:

(1) Track plan infrastructure;

(2) Total number of trains and movement density;

(3) Train movement operational rules, as enforced by the dispatcher and train crew behaviors;

(4) Wayside subsystems and components; and

(5) Onboard subsystems and components.

(e) *What other relevant parameters must be determined for the subsystems and components?* The failure modes of each subsystem or component, or both, must be determined for the integrated hardware/software (where applicable) as a function of the Mean Time To Failure (MTTF) failure restoration rates, and the integrated hardware/software coverage of all processor-based subsystems or components, or both. Train operating and movement rules, along with components that are layered in order to enhance safety-critical behavior, must also be considered.

(f) *How are processor-based subsystems/components assessed?* (1) An MTTHE value must be calculated for each processor-based subsystem or component, or both, indicating the safety-critical behavior of the integrated hardware/software subsystem or component, or both. The human factor impact must be included in the assessment, whenever applicable, to provide an integrated MTTHE value. The MTTHE calculation must consider the rates of failures caused by permanent, transient, and intermittent faults accounting for the fault coverage of the integrated hardware/software subsystem or component, phased-interval maintenance, and restoration of the detected failures.

(2) MTTHE compliance verification and validation must be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The compliance process must be demonstrated to be compliant and consistent with the MTTHE metric and demonstrated to have a high degree of confidence.

(g) *How are non-processor-based subsystems/components assessed?* (1) The safety-critical behavior of all non-processor-based components, which are part of a processor-based system or subsystem, must be quantified with an MTTHE metric. The MTTHE assessment methodology must consider failures caused by permanent, transient, and intermittent faults, phase-interval maintenance and restoration of failures and the effect of fault coverage of each non-processor-based subsystem or component.

(2) MTTHE compliance verification and validation must be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The non-processor-based quantification compliance must be demonstrated to have a high degree of confidence.

(h) *What assumptions must be documented?* (1) The railroad shall document any assumptions regarding the reliability or availability of mechanical, electric, or electronic components. Such assumptions must include MTTF projections, as well as Mean Time To Repair (MTTR) projections, unless the risk assessment specifically explains why these assumptions are not relevant to the risk assessment. The railroad shall document these assumptions in such a form as to permit later automated comparisons with in-service experience (*e.g.*, a spreadsheet).

(2) The railroad shall document any assumptions regarding human performance. The documentation shall be in such a form as to facilitate later comparisons with in-service experience.

(3) The railroad shall document any assumptions regarding software defects. These assumptions shall be in a form which permits the railroad to project the likelihood of detecting an in-service software defect. These assumptions shall be documented in such a form as to permit later automated comparisons with in-service experience.

(4) The railroad shall document all of the identified safety-critical fault paths. The documentation shall be in such a form as to facilitate later comparisons with in-service faults.

■ 13. Add Appendix C to part 236 to read as follows:

Appendix C to Part 236—Safety Assurance Criteria and Processes

(a) *What is the purpose of this appendix?* This appendix seeks to promote full disclosure of safety risk to facilitate minimizing or eliminating elements of risk where practicable by providing minimum criteria and processes for safety analyses conducted in support of PSPs. The analysis required by this appendix is intended to minimize the probability of failure to an acceptable level, helping to optimize the safety of the product within the limitations of the available engineering science, cost, and other constraints. FRA uses the criteria and processes set forth in this appendix to evaluate analyses, assumptions, and conclusions provided in RSPP and PSP documents. An analysis performed under this appendix must:

(1) Address each area of paragraph (b) of this appendix, explaining how such objectives are addressed or why they are not relevant, and

(2) Employ a validation and verification process pursuant to paragraph (c) of this appendix.

(b) *What categories of safety elements must be addressed?* The designer shall address each of the following safety considerations when designing and demonstrating the safety of products covered by subpart H of this part. In the event that any of these principles are not followed, the PSP shall state both the reason(s) for departure and the alternative(s) utilized to mitigate or eliminate the hazards associated with the design principle not followed.

(1) *Normal operation.* The system (including all hardware and software) must demonstrate safe operation with no hardware failures under normal anticipated operating conditions with proper inputs and within the expected range of environmental conditions. All safety-critical functions must be performed properly under these normal conditions. Absence of specific operator actions or procedures will not prevent the system from operating safely. There must be no hazards that are categorized as unacceptable or undesirable. Hazards categorized as unacceptable must be eliminated by design.

(2) *Systematic failure.* It must be shown how the product is designed to mitigate or eliminate unsafe systematic failures—those conditions which can be attributed to human error that could occur at various stages throughout product development. This includes unsafe errors in the software due to human error in the software specification, design or coding phases, or both; human errors that could impact hardware design; unsafe conditions that could occur because of an improperly designed human-machine interface; installation and maintenance errors; and errors associated with making modifications.

(3) *Random failure.* (i) The product must be shown to operate safely under conditions of random hardware failure. This includes single as well as multiple hardware failures, particularly in instances where one or more failures could occur, remain undetected (latent) and react in combination with a subsequent failure at a later time to cause an unsafe operating situation. In instances involving a latent failure, a subsequent failure is similar to there being a single failure. In the event of a transient failure, and if so designed, the system should restart itself if it is safe to do so. Frequency of attempted restarts must be considered in the hazard analysis required by § 236.907(a)(8).

(ii) There shall be no single point failures in the product that can result in hazards categorized as unacceptable or undesirable. Occurrence of credible single point failures that can result in hazards must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(iii) If one non-self-revealing failure combined with a second failure can cause a hazard that is categorized as unacceptable or undesirable, then the second failure must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(4) *Common Mode failure.* Another concern of multiple failure involves common mode failures in which two or more subsystems or components intended to compensate one another to perform the same function all fail by the same mode and result in unsafe conditions. This is of particular concern in instances in which two or more elements (hardware or software, or both) are used in combination to ensure safety. If a common mode failure exists, then any analysis performed under this appendix cannot rely on the assumption that failures are independent. Examples include: the use of redundancy in which two or more elements perform a given function in parallel and when one (hardware or software) element checks/monitors another element (of hardware or software) to help ensure its safe operation. Common mode failure relates to independence, which must be ensured in these instances. When dealing with the effects of hardware failure, the designer shall address the effects of the failure not only on other hardware, but also on the execution of the software, since hardware failures can greatly affect how the software operates.

(5) *External influences.* The product must be shown to operate safely when subjected to different external influences, including:

(i) Electrical influences such as power supply anomalies/transients, abnormal/improper input conditions (*e.g.*, outside of normal range inputs relative to amplitude and frequency, unusual combinations of inputs) including those related to a human operator, and others such as electromagnetic interference or electrostatic discharges, or both;

(ii) Mechanical influences such as vibration and shock; and

(iii) Climatic conditions such as temperature and humidity.

(6) *Modifications.* Safety must be ensured following modifications to the hardware or software, or both. All or some of the concerns identified in this paragraph may be applicable depending upon the nature and extent of the modifications.

(7) *Software.* Software faults must not cause hazards categorized as unacceptable or undesirable.

(8) *Closed Loop Principle.* The product design must require positive action to be taken in a prescribed manner to either begin product operation or continue product operation.

(9) *Human Factors Engineering:* The product design must sufficiently incorporate human factors engineering that is appropriate to the complexity of the product; the educational, mental, and physical capabilities of the intended operators and maintainers; the degree of required human interaction with the component; and the environment in which the product will be used.

(c) *What standards are acceptable for verification and validation?* (1) The standards employed for verification or validation, or both, of products subject to this subpart must be sufficient to support achievement of the applicable requirements of subpart H of this part.

(2) U.S. Department of Defense Military Standard (MIL-STD) 882C, ''System Safety Program Requirements'' (January 19, 1993), is recognized as providing appropriate risk analysis processes for incorporation into verification and validation standards.

(3) The following standards designed for application to processor-based signal and train control systems are recognized as acceptable with respect to applicable elements of safety analysis required by subpart H of this part. The latest versions of the standards listed below should be used unless otherwise provided.

(i) IEEE 1483–2000, Standard for the Verification of Vital Functions in Processor-Based Systems Used in Rail Transit Control.

(ii) CENELEC Standards as follows:

(A) EN50126: 1999, Railway Applications: Specification and Demonstration of

Reliability, Availability, Maintainability and Safety (RAMS);

(B) EN50128 (May 2001), Railway Applications: Software for Railway Control and Protection Systems;

(C) EN50129: 2003, Railway Applications: Communications, Signaling, and Processing Systems-Safety Related Electronic Systems for Signaling; and

(D) EN50155:2001/A1:2002, Railway Applications: Electronic Equipment Used in Rolling Stock.

(iii) ATCS Specification 140, Recommended Practices for Safety and Systems Assurance.

(iv) ATCS Specification 130, Software Quality Assurance.

(v) AAR-AREMA 2005 Communications and Signal Manual of Recommended Practices, Part 17.

(vi) Safety of High Speed Ground Transportation Systems. Analytical Methodology for Safety Validation of Computer Controlled Subsystems. Volume II: Development of a Safety Validation Methodology. Final Report September 1995. Author: Jonathan F. Luedeke, Battelle. DOT/FRA/ORD–95/10.2.

(vii) IEC 61508 (International Electrotechnical Commission), Functional Safety of Electrical/Electronic/Programmable/Electronic Safety (E/E/P/ES) Related Systems, Parts 1–7 as follows:

(A) IEC 61508–1 (1998–12) Part 1: General requirements and IEC 61508–1 Corr. (1999–05) Corrigendum 1-Part 1:General Requirements.

(B) IEC 61508–2 (2000–05) Part 2: Requirements for electrical/electronic/programmable electronic safety-related systems.

(C) IEC 61508–3 (1998–12) Part 3: Software requirements and IEC 61508–3 Corr.1(1999–04) Corrigendum 1-Part3: Software requirements.

(D) IEC 61508–4 (1998–12) Part 4: Definitions and abbreviations and IEC 61508–4 Corr.1(1999–04) Corrigendum 1-Part 4: Definitions and abbreviations.

(E) IEC 61508–5 (1998–12) Part 5: Examples of methods for the determination of safety integrity levels and IEC 61508–5 Corr.1 (1999–04) Corrigendum 1 Part 5: Examples of methods for determination of safety integrity levels.

(F) IEC 61508–6 (2000–04) Part 6: Guidelines on the applications of IEC 61508–2 and –3.

(G) IEC 61508–7 (2000–03) Part 7: Overview of techniques and measures.

(4) Use of unpublished standards, including proprietary standards, is authorized to the extent that such standards are shown to achieve the requirements of this part. However, any such standards shall be available for inspection and replication by FRA and for public examination in any public proceeding before the FRA to which they are relevant.

■ 14. Add Appendix D to part 236 to read as follows:

Appendix D to Part 236—Independent Review of Verification and Validation

(a) *What is the purpose of this appendix?* This appendix provides minimum requirements for independent third-party assessment of product safety verification and validation pursuant to subpart H of this part. The goal of this assessment is to provide an independent evaluation of the product manufacturer's utilization of safety design practices during the product's development and testing phases, as required by the applicable railroad's RSPP, the product PSP, the requirements of subpart H of this part, and any other previously agreed-upon controlling documents or standards.

(b) *What general requirements apply to the conduct of third party assessments?* (1) The supplier may request advice and assistance of the reviewer concerning the actions identified in paragraphs (c) through (g) of this appendix. However, the reviewer should not engage in design efforts, in order to preserve the reviewer's independence and maintain the supplier's proprietary right to the product.

(2) The supplier shall provide the reviewer access to any and all documentation that the reviewer requests and attendance at any design review or walkthrough that the reviewer determines as necessary to complete and accomplish the third party assessment. The reviewer may be accompanied by representatives of FRA as necessary, in FRA's judgment, for FRA to monitor the assessment.

(c) *What must be done at the preliminary level?* The reviewer shall evaluate with respect to safety and comment on the adequacy of the processes which the supplier applies to the design and development of the product. At a minimum, the reviewer shall compare the supplier processes with acceptable methodology and employ any other such tests or comparisons if they have been agreed to previously with FRA. Based on these analyses, the reviewer shall identify and document any significant safety vulnerabilities which are not adequately mitigated by the supplier's (or user's) processes. Finally, the reviewer shall evaluate the adequacy of the railroad's RSPP, the PSP, and any other documents pertinent to the product being assessed.

(d) *What must be done at the functional level?* (1) The reviewer shall analyze the Preliminary Hazard Analysis (PHA) for comprehensiveness and compliance with the railroad's RSPP.

(2) The reviewer shall analyze all Fault Tree Analyses (FTA), Failure Mode and Effects Criticality Analysis (FMECA), and other hazard analyses for completeness, correctness, and compliance with the railroad's RSPP.

(e) *What must be done at the implementation level?* The reviewer shall randomly select various safety-critical software modules for audit to verify whether the requirements of the RSPP were followed. The number of modules audited must be determined as a representative number sufficient to provide confidence that all unaudited modules were developed in compliance with the RSPP.

(f) *What must be done at closure?* (1) The reviewer shall evaluate and comment on the plan for installation and test procedures of the product for revenue service.

(2) The reviewer shall prepare a final report of the assessment. The report shall be submitted to the railroad prior to the commencement of installation testing and contain at least the following information:

(i) Reviewer's evaluation of the adequacy of the PSP, including the supplier's MTTHE and risk estimates for the product, and the supplier's confidence interval in these estimates;

(ii) Product vulnerabilities which the reviewer felt were not adequately mitigated, including the method by which the railroad would assure product safety in the event of a hardware or software failure (*i.e.*, how does the railroad assure that all potentially hazardous failure modes are identified?) and the method by which the railroad addresses comprehensiveness of the product design for the requirements of the operations it will govern (*i.e.*, how does the railroad assure that all potentially hazardous operating circumstances are identified? Who records any deficiencies identified in the design process? Who tracks the correction of these deficiencies and confirms that they are corrected?);

(iii) A clear statement of position for all parties involved for each product vulnerability cited by the reviewer;

(iv) Identification of any documentation or information sought by the reviewer that was denied, incomplete, or inadequate;

(v) A listing of each RSPP procedure or process which was not properly followed;

(vi) Identification of the software verification and validation procedures for the product's safety-critical applications, and the reviewer's evaluation of the adequacy of these procedures;

(vii) Methods employed by the product manufacturer to develop safety-critical software, such as use of structured language, code checks, modularity, or other similar generally acceptable techniques; and

(viii) Method by which the supplier or railroad addresses comprehensiveness of the product design which considers the safety elements listed in paragraph (b) of appendix C to this part.

■ 15. Add Appendix E to part 236 to read as follows:

Appendix E to Part 236—Human-Machine Interface (HMI) Design

(a) *What is the purpose of this appendix?* The purpose of this appendix is to provide HMI design criteria which will minimize negative safety effects by causing designers to consider human factors in the development of HMIs.

(b) *What is meant by ''designer'' and ''operator''?* As used in this section, ''designer'' means anyone who specifies requirements for—or designs a system or subsystem, or both, for—a product subject to subpart H of this part, and ''operator'' means any human who is intended to receive information from, provide information to, or perform repairs or maintenance on a signal or train control product subject to subpart H of this part.

(c) *What kinds of human factors issues must designers consider with regard to the general function of a system?*

(1) *Reduced situational awareness and over-reliance.* HMI design must give an

operator active functions to perform, feedback on the results of the operator's actions, and information on the automatic functions of the system as well as its performance. The operator must be ''in-the-loop.'' Designers shall consider at minimum the following methods of maintaining an active role for human operators:

(i) The system must require an operator to initiate action to operate the train and require an operator to remain ''in-the-loop'' for at least 30 minutes at a time;

(ii) The system must provide timely feedback to an operator regarding the system's automated actions, the reasons for such actions, and the effects of the operator's manual actions on the system;

(iii) The system must warn operators in advance when they require an operator to take action; and

(iv) HMI design must equalize an operator's workload.

(2) *Expectation of predictability and consistency in product behavior and communications.* HMI design must accommodate an operator's expectation of logical and consistent relationships between actions and results. Similar objects must behave consistently when an operator performs the same action upon them.

(3) *Limited memory and ability to process information.*

(i) HMI design must minimize an operator's information processing load. To minimize information processing load, the designer shall:

(A) Present integrated information that directly supports the variety and types of decisions that an operator makes;

(B) Provide information in a format or representation that minimizes the time required to understand and act; and

(C) Conduct utility tests of decision aids to establish clear benefits such as processing time saved or improved quality of decisions.

(ii) HMI design must minimize the load on an operator's memory.

(A) To minimize short-term memory load, the designer shall integrate data or information from multiple sources into a single format or representation (''chunking'') and design so that three or fewer ''chunks'' of information need to be remembered at any one time.

(B) To minimize long-term memory load, the designer shall design to support recognition memory, design memory aids to minimize the amount of information that must be recalled from unaided memory when making critical decisions, and promote active processing of the information.

(4) *Miscellaneous Human Factors Concerns.* System designers shall:

(i) Design systems that anticipate possible user errors and include capabilities to catch errors before they propagate through the system;

(ii) Conduct cognitive task analyses prior to designing the system to better understand the information processing requirements of operators when making critical decisions; and

(iii) Present information that accurately represents or predicts system states.

(d) *What kinds of HMI design elements must a designer incorporate in the development of on-board train displays and controls?*

(1) *Location of displays and controls.* Designers shall:

(i) Locate displays as close as possible to the controls that affect them;

(ii) Locate displays and controls based on an operator's position;

(iii) Arrange controls to minimize the need for the operator to change position;

(iv) Arrange controls according to their expected order of use;

(v) Group similar controls together;

(vi) Design for high stimulus-response compatibility (geometric and conceptual);

(vii) Design safety-critical controls to require more than one positive action to activate (*e.g.*, auto stick shift requires two movements to go into reverse); and

(viii) Design controls to allow easy recovery from error.

(2) *Information management.* HMI design must:

(i) Display information in a manner which emphasizes its relative importance;

(ii) Comply with the ANSI/HFS 100–1988 standard;

(iii) Design for display luminance of the foreground or background of at least 35 cd/m^2 (the displays should be capable of a minimum contrast 3:1 with 7:1 preferred, and controls should be provided to adjust the brightness level and contrast level);

(iv) Design the interface to display only the information necessary to the user;

(v) Where text is needed, using short, simple sentences or phrases with wording that an operator will understand;

(vi) Use complete words where possible; where abbreviations are necessary, choose a commonly accepted abbreviation or consistent method and select commonly used terms and words that the operator will understand;

(vii) Adopt a consistent format for all display screens by placing each design element in a consistent and specified location;

(viii) Display critical information in the center of the operator's field of view by placing items that need to be found quickly in the upper left hand corner and items which are not time-critical in the lower right hand corner of the field of view;

(ix) Group items that belong together;

(x) Design all visual displays to meet human performance criteria under monochrome conditions and add color only if it will help the user in performing a task, and use color coding as a redundant coding technique;

(xi) Limit the number of colors over a group of displays to no more than seven;

(xii) Design warnings to match the level of risk or danger with the alerting nature of the signal;

(xiii) With respect to information entry, avoid full QWERTY keyboards for data entry; and

(xiv) Use digital communications for safety-critical messages between the locomotive engineer and the dispatcher.

(e) *What kinds of HMI design elements must a designer consider with respect to problem management?* (1) HMI design must enhance an operator's situation awareness. An operator must have access to:

(i) Knowledge of the operator's train location relative to relevant entities;

(ii) Knowledge of the type and importance of relevant entities;

(iii) Understanding of the evolution of the situation over time;

(iv) Knowledge of the roles and responsibilities of relevant entities; and

(v) Knowledge of expected actions of relevant entities.

(2) HMI design must support response selection and scheduling.

(3) HMI design must support contingency planning.

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Robert D. Jamison,

Acting Administrator, Federal Railroad Administration.

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200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.